

**SESSION LAWS**  
**OF**  
**HAWAII**  
**PASSED BY THE**  
**TWENTY-FIRST STATE LEGISLATURE**  
**STATE OF HAWAII**

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**THIRD SPECIAL SESSION**  
**2001**

Convened on Monday, October 22, 2001 and  
Adjourned sine die on Friday, October 26, 2001

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**REGULAR SESSION**  
**2002**

Convened on Wednesday, January 16, 2002 and  
Adjourned sine die on Thursday, May 2, 2002

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Published under Authority of  
Section 23G-13, Hawaii Revised Statutes  
by the  
Revisor of Statutes  
State of Hawaii  
Honolulu, Hawaii



## PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Third Special Session of 2001 and Regular Session of 2002.

The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

Statutory material that is being repealed is either bracketed or bracketed and stricken. New material is indicated by underscoring. As authorized by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Wendell K. Kimura  
Revisor of Statutes

Honolulu, Hawaii  
July 10, 2002

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**Session Laws of Hawaii  
Passed By The  
Twenty-First State Legislature  
Third Special Session  
2001**

**ACT 1**

H.B. NO. 1

A Bill for an Act Relating to Social Welfare.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The terrorist attacks on September 11, 2001, have had a devastating economic impact on the State of Hawaii. Severe slowdowns in the travel and tourism industries have seriously damaged our tourism-based economy and have cost many workers their jobs. The massive number of layoffs, furloughs, and other cutbacks in the workforce have forced, and will force many families to struggle to attain even the basic necessities for living such as food and shelter.

The legislature finds that there is a pressing need to deal with this crisis.

Social welfare organizations have indicated that there is a growing demand for food, but a decreasing supply of food to meet those needs. The situation is further exacerbated by the fact that public donations have been primarily directed to New York City, while fewer donations have come in for local causes. The demand for housing assistance is also growing as most shelters and other forms of housing are already at full capacity. Advocates for the homeless have predicted that in the coming months, hundreds of families will be forced to live in cars, on beaches, and in parks, as the economic downturn intensifies.

An additional potential problem will arise when eight hundred families currently receiving federal welfare benefits will no longer qualify for benefits after November, 2001. These families will also need assistance in the coming months, further depleting already scarce resources.

The legislature finds that expenditures from the emergency budget and reserve fund established by section 328L-3, Hawaii Revised Statutes, are needed to meet the conditions of emergency, economic downturn, and unforeseen reduction in revenues that presently confront the State. Further, the legislature finds that the appropriations in this Act are consistent with the purposes of the emergency budget and reserve fund.

The purpose of this Act is to provide funding for food and financial assistance for housing to assist those who lack these critical items.

SECTION 2. There is appropriated out of the emergency budget and reserve fund of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the office of community services of the

department of labor and industrial relations to fund grants-in-aid to provide food for Hawaii's needy.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 3. Of the \$1,000,000 appropriation for fiscal year 2001-2002 from the emergency budget and reserve fund to the office of community services of the department of labor and industrial relations, there is appropriated the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 to fund grants-in-aid to provide food for Hawaii's needy.

The sum appropriated shall be expended by the office of community services of the department of labor and industrial relations for the purposes of this Act; provided that the sum appropriated in this section shall not be expended for any administrative purposes.

SECTION 4. There is appropriated out of the emergency budget and reserve fund of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the housing and community development corporation of Hawaii to provide financial assistance that addresses the housing needs of Hawaii's needy.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 5. Of the \$1,000,000 appropriation for fiscal year 2001-2002 from the emergency budget and reserve fund to the housing and community development corporation of Hawaii, there is appropriated the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 to provide financial assistance that addresses the housing needs of Hawaii's needy.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii for the purposes of this Act; provided that the sum appropriated in this section shall not be expended for any administrative purposes.

SECTION 6. The expenditure of funds appropriated in this Act shall be subject to financial audits by the office of the legislative auditor.

SECTION 7. The office of community services and the housing and community development corporation of Hawaii shall submit detailed expenditure reports of the funds appropriated in this Act to the legislature no later than twenty days before the convening of the Regular Session of 2002.

SECTION 8. This Act shall take effect upon its approval.

(Approved November 2, 2001.)

## ACT 2

H.B. NO. 9

A Bill for an Act Making an Appropriation for the Immediate Implementation of an Integrated Marketing Plan to Market and Promote the State of Hawaii as a Visitor Destination.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. On September 11, 2001, four commercial aircraft were hijacked by terrorists. Two of the aircraft were flown directly into the "twin towers" of the World Trade Center in New York City resulting in the destruction of both towers and the tragic death of thousands of innocent people. A third aircraft was flown directly into the Pentagon building resulting in its partial ruin and the tragic death of more innocent people. The fourth aircraft crashed into an open site in Pennsylvania due to the heroic acts of the passengers which prevented the aircraft from causing further tragedy.

In response to these terrorist attacks, the Federal Aviation Administration immediately ordered all aircraft to be grounded from September 11, 2001, until limited authorization was provided to allow commercial aircraft to fly into designated airports on September 13, 2001. Various airlines have reduced their flights after September 11, 2001. Although security measures at all airports were significantly enhanced after September 11, 2001, passenger confidence to travel by air was greatly impacted.

As a result of the terrorist attacks on September 11, 2001, the national economy and consumer confidence was severely impacted. The lack of confidence in traveling by air has emerged as a major consumer barrier as uncertainty over future terrorist actions persists. Travelers reacted to the terrorist attacks by canceling near-term leisure and business trips. A recent poll of United States residents indicated that approximately 42 per cent to 59 per cent are less willing to fly now. Likewise, a poll in Japan indicated that approximately 46 per cent of the 367 surveyed said they would keep their travel plans to Hawaii through February 2002. Twenty-three per cent said they will not visit Hawaii, and 24 per cent said they had not decided. As an island State, Hawaii relies primarily upon air transportation as the manner of travel for traveling to Hawaii for business and leisure.

The drop in passenger counts in September 2001, has been dramatic, falling by about forty per cent for the period September 11, 2001, to September 30, 2001, as compared to the same period last year. The numbers of passengers on domestic flights have recovered to about eighty per cent of what they were in the first week of October 2000, but Japanese arrivals are still at about sixty per cent of what they were. The department of business, economic development and tourism has estimated that if visitor losses average thirteen per cent for the rest of the year, or about the same as experienced during the Gulf War of 1991, layoffs of approximately 11,000 employees would occur and the gross state product would decline by nearly \$500 million. If visitor industry losses equate to a thirty per cent downturn for the remainder of 2001, the State is looking at layoffs exceeding 27,000 employees, and as much as a \$1 billion loss in the gross state product for the year.

Immediately after the terrorist attacks, Hawaii experienced a near term cancellation of leisure and business trips, and shortly thereafter Hawaii visitor industry employees had to reduce their hours, share jobs, accept a furlough, voluntarily accelerate their vacation, and be laid off. According to data from the department of labor and industrial relations, initial unemployment filings in Hawaii's air transportation industry are at seven times typical levels, retail unemployment filings at eight times last years numbers, and hotel workers a disturbing twenty times higher than the previous year.

The legislature finds that the State of Hawaii is in an economic crisis as a direct result of the terrorist attacks on September 11, 2001. In response to this economic crisis, the State must take immediate steps to minimize the severity and length of the negative economic spiral, especially within the visitor industry.

One such step is to support an integrated marketing plan to promote the State of Hawaii as a visitor destination for business and leisure. The marketing plan will capitalize on Hawaii's uniquely positive global brand and focus on visitor travel to and from Hawaii during the period October 2001, to March 2002. The goal of the marketing plan will be to stabilize visitor levels to 2001 levels by the end of the second quarter of 2002.

The purpose of this Act is to fund the immediate implementation of an integrated marketing plan that will address the lack of confidence by visitors in traveling by air arising from the terrorist attacks and any other factors that immediately impact travel to Hawaii.

SECTION 2. There is appropriated out of the tourism special fund of the State of Hawaii the sum of \$10,000,000 or so much thereof as may be necessary for the fiscal year 2001-2002 for the immediate implementation of an integrated marketing plan to market and promote the State of Hawaii as a visitor destination. The marketing plan shall respond to the changed market conditions resulting from the terrorist attacks of September 11, 2001. Existing tourism marketing contracts may be amended to implement the purposes of this Act.

SECTION 3. The sum appropriated shall be expended by the Hawaii tourism authority for the purposes of this Act and in addition to the amount previously appropriated to the authority under Act 259, Session Laws of Hawaii 2001.

SECTION 4. The Hawaii tourism authority, with assistance from the Hawaii Visitors and Convention Bureau, shall report to the legislature by March 1, 2002, on its implementation of an integrated plan to market and promote the State of Hawaii as a visitor destination in response to the changed market conditions resulting from the terrorist attacks of September 11, 2001. The report shall include the details on how the \$10,000,000 was expended, and how these expenditures relate to other expenditures by the Hawaii tourism authority for marketing.

SECTION 5. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawaii Constitution or section 10 of Article I of the United States Constitution.

SECTION 6. This Act shall take effect upon its approval.

(Approved November 2, 2001.)

**ACT 3**

H.B. NO. 14

A Bill for an Act Relating to Capital Improvement Projects.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART 1**

SECTION 1. The legislature finds that the devastating acts of terrorism on September 11, 2001, and our country's subsequent military response, have had a

profound and crippling effect on Hawaii's recovering economy, as well as on the livelihood and well being of Hawaii's people. Inasmuch as the legislature recognizes its obligation to promote economic stability and growth on behalf of the people it represents, the legislature intends to utilize all instrumentalities of government within its power to guide, direct, and influence the revival of the State's economy, in order to ensure the financial security of its people; preserve our desired quality of life; and restore hope and confidence in the future of our State.

The legislature acknowledges that an effective way for government to facilitate recovery and ensure the creation of fertile economic conditions is to focus public investment into economic sectors within our control, and to specific areas that will maximize and enhance productivity in our community. Toward this end, the legislature intends to authorize the implementation of approximately \$100,000,000 for public works construction projects, concentrating on funding of those areas fundamental to all economic activity — the development, maintenance, and improvement of physical plants and infrastructure to support education and a skilled workforce; the development of reliable communications to connect businesses and ensure global security and connectivity; the maintenance and improvement of our investments in public buildings and infrastructure; and the preservation and enhancement of our cultural and environmental assets.

## PART II

SECTION 2. Act 259, Session Laws of Hawaii 2001, Section 3, is amended as follows:

(1) By amending Item G-1 to read:

“G. FORMAL EDUCATION

### 1. EDN100 — SCHOOL-BASED BUDGETING

		11,849.50*	11,815.50*
OPERATING	EDN	884,044,285A	929,885,433A
	EDN	5,372,924B	5,372,924B
	EDN	61,824,930N	61,199,930N
	EDN	3,410,000T	3,410,000T
	EDN	928,135U	928,135U
	EDN	3,000,000W	3,000,000W
INVESTMENT CAPITAL	AGS	[56,155,000B	47,090,000B]
		82,745,000B	20,500,000B
	AGS	12,262,000C	2,500,000C
	AGS	125,000R	R
	EDN	250,000B	250,000B
	EDN	493,000C	C”

(2) By amending Item G-7 to read:

“G. FORMAL EDUCATION

### 7. AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS

		240.00*	240.00*
OPERATING	AGS	23,259,540A	23,259,540A
INVESTMENT CAPITAL	AGS	[50,000,000C]	10,000,000C
		125,000,000C”	

(3) By amending Item G-12 to read:



## "G. FORMAL EDUCATION

## 12. UOH700 - UNIVERSITY OF HAWAII, WEST OAHU

		47.50*	47.50*
OPERATING	UOH	2,260,139A	2,260,139A
	UOH	1,200,000B	1,200,000B
	UOH	7,000N	7,000N
	UOH	125,000W	125,000W
INVESTMENT CAPITAL	UOH	8,000,000C	C''

(4) By amending Item G-14 to read:

## "G. FORMAL EDUCATION

## 14. UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT

		322.00*	322.00*
OPERATING	UOH	164,939,049A	176,958,152A
		4.00*	4.00*
	UOH	1,368,128B	1,368,128B
		4.00*	4.00*
	UOH	457,667N	457,667N
		100.00*	100.00*
	UOH	45,112,127W	45,112,127W
INVESTMENT CAPITAL	AGS	5,759,000C	9,649,000C
	UOH	[15,172,000C]	13,434,000C
		32,172,000C	
	UOH	1,000,000W	W''

(5) By amending Item K-8 to read:

## "K. GOVERNMENT-WIDE SUPPORT

## 8. BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING

		51.00*	51.00*
OPERATING	BUF	122,831,542A	131,262,943A
	BUF	146,546,305U	156,323,622U
INVESTMENT CAPITAL	AGS	5,000,000C	C
	BUF	[83,535,000C]	77,340,000C''
		110,125,000C	50,750,000C''

SECTION 3, Act 259, Session Laws of Hawaii 2001, Section 91, is amended as follows:

(1) By amending Item G-18 to read:

## "G-18 AUGUST AHRENS ELEMENTARY SCHOOL, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR  
AN EIGHT CLASSROOM BUILDING; GROUND  
AND SITE IMPROVEMENTS; EQUIPMENT AND  
APPURTENANCES.

DESIGN		225	
CONSTRUCTION		3,000	[3,000]
EQUIPMENT		200	[200]
TOTAL FUNDING	AGS	[225B]	[3,200]B''
		3,425B	

(2) By amending Item G-19 to read:

“G-19 CENTRAL MIDDLE SCHOOL, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR  
THE RENOVATION OF BUILDING A, PHASE I;  
GROUND AND SITE IMPROVEMENTS;  
EQUIPMENT AND APPURTENANCES.

DESIGN		365	
CONSTRUCTION		<u>5,100</u>	[5,100]
EQUIPMENT		<u>125</u>	[125]
TOTAL FUNDING	AGS	<u>[365B]</u>	[5,225]B”
		<u>5,590B</u>	

(3) By amending Item G-23 to read:

“G-23 LEILEHUA HIGH SCHOOL, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR  
AN EIGHT CLASSROOM BUILDING  
(REPLACEMENT); GROUND AND SITE  
IMPROVEMENTS; EQUIPMENT AND  
APPURTENANCES.

DESIGN		320	
CONSTRUCTION		<u>3,100</u>	[3,100]
EQUIPMENT		<u>100</u>	[100]
TOTAL FUNDING	AGS	<u>[320B]</u>	[3,200]B”
		<u>3,520B</u>	

(4) By amending Item G-24 to read:

“G-24 240100 MILILANI MAUKA II ELEMENTARY SCHOOL, OAHU

CONSTRUCTION AND EQUIPMENT FOR FIRST  
(1<sup>ST</sup>) AND/OR SECOND INCREMENT; GROUND  
AND SITE IMPROVEMENTS; EQUIPMENT AND  
APPURTENANCES.

CONSTRUCTION		[9,942]	[6,999]
		<u>16,941</u>	
EQUIPMENT		<u>[500]</u>	[1]
		<u>501</u>	
TOTAL FUNDING	AGS	<u>[10,442B]</u>	[7,000]B”
		<u>17,442B</u>	

(5) By amending Item G-26 to read:

“G-26 PEARL HARBOR KAI ELEMENTARY SCHOOL, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR  
THE RENOVATION OF BUILDING “F” (BOMB  
SHELTER) INTO CLASSROOMS, STORAGE,  
OFFICES, TOILETS, PARKING; GROUND AND SITE  
IMPROVEMENTS; EQUIPMENT AND  
APPURTENANCES.

DESIGN		200	
CONSTRUCTION		<u>1,800</u>	[1,800]
EQUIPMENT		<u>65</u>	[65]
TOTAL FUNDING	AGS	<u>[200B]</u>	[1,865]B”
		<u>2,065B</u>	

(6) By amending Item G-27 to read:

“G-27 ROOSEVELT HIGH SCHOOL, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR  
THE RENOVATION OF BUILDING A, PHASE I;  
GROUND AND SITE IMPROVEMENTS;  
EQUIPMENT AND APPURTENANCES.

DESIGN		800	
CONSTRUCTION		<u>3,800</u>	[3,800]
EQUIPMENT		200	[200]
TOTAL FUNDING	AGS	<u>[800B]</u>	[4,000]B**
		<u>4,800B</u>	

(7) By amending Item G-29 to read:

“G-29 WAIMEA HIGH SCHOOL, KAUAI

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR  
THE RENOVATION OF BUILDINGS C AND H;  
GROUND AND SITE IMPROVEMENTS;  
EQUIPMENT AND APPURTENANCES.

DESIGN		200	
CONSTRUCTION		<u>2,000</u>	[2,000]
EQUIPMENT		100	[100]
TOTAL FUNDING	AGS	<u>[200B]</u>	[2,100]B**
		<u>2,300B</u>	

(8) By amending Item G-44 to read:

“G-44 CSD03 LUMP SUM CIP-SCHOOL BUILDING IMPROVEMENTS,  
STATEWIDE

DESIGN AND CONSTRUCTION FOR THE  
IMPROVEMENT OF PUBLIC SCHOOL FACILITIES  
STATEWIDE. PROJECTS MAY INCLUDE ROOFING,  
AIR CONDITIONING, PAINTING, PLUMBING,  
OTHER REPAIRS AND IMPROVEMENTS TO  
PUBLIC SCHOOL FACILITIES MAINTAINED BY  
DAGS AND/OR DOE.

DESIGN		6,000	2,000
CONSTRUCTION		<u>[44,000]</u>	8,000
		119,000	
TOTAL FUNDING	AGS	<u>[50,000C]</u>	10,000C**
		<u>125,000C</u>	

(9) By amending Item G-68 to read:

“G-68 541 SYS, FACILITIES IMPROVEMENTS-REPAIRS AND MAINTENANCE,  
STATEWIDE

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENEWAL AND RENOVATION OF THE UNIVERSITY'S PHYSICAL PLANT. PROJECT TO INCLUDE REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.

PLANS		100	100
DESIGN		1,000	1,000
CONSTRUCTION		[8,899]	8,899
		<u>25,899</u>	
EQUIPMENT		1	1
TOTAL FUNDING	UOH	[10,000C]	10,000C''
		<u>27,000C</u>	

(10) By amending Item K-4 to read:

“K-4 00-02 STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.

CONSTRUCTION		[53,535]	[47,340]
		80,125	20,750
TOTAL FUNDING	BUF	[53,535C]	[47,340C]
		<u>80,125C</u>	<u>20,750C''</u>

SECTION 4. Act 259, Session Laws of Hawaii 2001, Section 91, is amended by adding a new item to read as follows:

**“UOH700- UNIVERSITY OF HAWAII, WEST OAHU**

G-57N CAMPUS DEVELOPMENT, UNIVERSITY OF HAWAII-WEST OAHU

PLANS AND DESIGN FOR THE DEVELOPMENT OF THE UNIVERSITY OF HAWAII-WEST OAHU AT THE CITY OF KAPOLEI.

PLANS		2,000	
DESIGN		6,000	
TOTAL FUNDING	UOH	8,000C	C''

SECTION 5. Act 259, Session Laws of Hawaii 2001, Section 102, is amended to read as follows:

“SECTION 102. Provided that of the general obligation bond fund appropriation for physical plant operations and maintenance (AGS 807), the sum of [~~\$50,000,000~~] \$125,000,000 in fiscal year 2001-2002 and the sum of \$10,000,000 in fiscal year 2002-2003 shall be expended only for repairs and maintenance of school facilities.”

SECTION 6. Act 259, Session Laws of Hawaii 2001, Section 103, is amended to read as follows:

“SECTION 103. Provided that of the general obligation bond fund appropriation for university of Hawaii systemwide support (UOH 900), the sum of

[\$10,000,000] \$27,000,000 in fiscal year 2001-2002 and the sum of \$10,000,000 in fiscal year 2002-2003 shall be expended only for improvements and repairs and maintenance of university facilities systemwide.”

### PART III

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,500,000, or so much thereof as may be necessary, for fiscal year 2002-2003, to be expended by the department of budget and finance for interest and principal on general obligation bonds; provided further that any unexpended funds shall lapse to the general fund.

### PART IV

SECTION 8. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, Section 13 of the State Constitution which states: “Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance,” the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the State is set forth in Article VII, Section 13 of the State Constitution, which states in part: “General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance.” Article VII, Section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including “reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year” and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under said Article VII, Section 13.
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2000-2001 and estimated for each fiscal year from 2001-2002 to 2004-2005, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
1997-1998	3,195,967,036	
1998-1999	3,254,256,686	
1999-2000	3,256,883,851	
2000-2001	3,428,080,000	\$598,604,967
2001-2002	3,567,843,000	612,918,600
2002-2003	3,674,705,000	632,256,422
2003-2004	3,856,504,000	658,022,060
2004-2005	(not applicable)	684,441,540

For fiscal years 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1997-1998, 1998-1999, and 1999-2000 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2000, dated November 24, 2000. The net general fund revenues for fiscal years 2000-2001 to 2003-2004 are estimates, based on general fund revenue estimates made as of September 5, 2001, by the council on revenues, the body assigned by Article VII, Section 7 of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by Article VII, Section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of September 1, 2001 is as follows for fiscal year 2002-2003 to fiscal year 2009-2010:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2002-2003	389,910,925
2003-2004	404,151,481
2004-2005	404,398,886
2005-2006	400,426,205
2006-2007	397,197,143
2007-2008	388,777,761
2008-2009	378,783,031
2009-2010	281,587,717

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2010-2011 to fiscal year 2021-2022 when the final installment of \$26,752,481 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$238,500,000, all or part of which is excludable in determining the power of the State to issue general

obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of August 31, 2001, adjusted for \$173,028,000 appropriations authorized by Act 259, Session Laws of Hawaii 2001, for \$8,713,000 appropriations authorized by Act 1, Special Session Laws of Hawaii 2001, and for the issuance of \$300,000,000 State of Hawaii General Obligation Bonds of 2001, Series CV, the total amount of authorized but unissued general obligation bonds is \$1,184,902,205. The total amount of general obligation bonds authorized in this Act is \$100,000,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized in this Act is \$1,284,902,205. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$238,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.
- (5) Proposed general obligation bond issuance. As reported herein for the fiscal years 2001-2002, 2002-2003, 2003-2004 and 2004-2005, the State proposes to issue \$200,000,000 in general obligation bonds during the first half of fiscal year 2001-2002, \$250,000,000 during the second half of fiscal year 2001-2002, \$150,000,000 during the first half of fiscal year 2002-2003, \$150,000,000 during the second half of fiscal year 2002-2003, \$150,000,000 during the first half of fiscal year 2003-2004, \$150,000,000 during the second half of fiscal year 2003-2004, \$150,000,000 during the first half of fiscal year 2004-2005 and \$100,000,000 during the second half of fiscal year 2004-2005. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fourth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the fiscal years 2001-2002 to 2003-2004 is \$1,050,000,000. An additional \$250,000,000 is proposed to be issued in fiscal year 2004-2005. The total amount of \$1,050,000,000 which is proposed to be issued through fiscal year 2003-2004 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$1,284,902,205, as reported in paragraph (4), except for \$234,902,205. It is assumed that the appropriations to which an additional \$234,902,205 in bond issuance needs to be applied will have been encumbered as of June 30, 2004. The \$250,000,000 which is proposed to be issued in fiscal year 2004-2005 will be sufficient to meet the requirements of the June 30, 2004 encumbrances in the amount of \$234,902,205. The amount of assumed encumbrances as of June 30, 2004 is reasonable and conservative.

based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds which is proposed to be issued by June 30, 2004, and the amount of June 30, 2004 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2004-2005, the legislature finds that in the aggregate, the amount of bonds which is proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:

- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
- (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 5.68 percent for the ten years from fiscal year 2001-2002 to fiscal year 2010-2011. For the purpose of this declaration, the assumption is made that five percent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13 of the State Constitution for the fiscal years 2001-2002, 2002-2003, 2003-2004, and 2004-2005 are as follows:

<u>Fiscal year</u>	Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution
2001-2002	3,585,286,468
2002-2003	3,654,844,095



2003-2004	3,699,192,537
2004-2005	3,665,370,256

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven percent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that the bonds identified in paragraph (5), which are issued prior to June 30, 2003 will be issued at an interest rate of 5.5 per cent and the bonds identified in paragraph (5) which are issued after July 1, 2003 will be issued at an interest rate of 6.0 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
1st half FY 2001-2002 \$190,000,000	612,604,967	421,116,649 (2004-2005)
2nd half FY 2001-2002 \$237,500,000	612,604,967	438,997,230 (2005-2006)
1st half FY 2002-2003 \$142,500,000	632,256,422	451,536,768 (2005-2006)
2nd half FY 2002-2003 \$142,500,000	632,256,422	461,887,680 (2006-2007)
1st half FY 2003-2004 \$142,500,000	658,022,060	475,047,680 (2006-2007)
2nd half FY 2003-2004 \$142,500,000	658,022,060	483,597,680 (2006-2007)
1st half FY 2004-2005 \$142,500,000	684,441,540	493,388,749 (2007-2008)

2nd half FY 2004-2005

\$95,000,000

684,441,540

499,088,749 (2007-2008)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 9. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 10. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized herein; provided that the sum total of general obligation bonds so issued shall not exceed \$100,000,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with Section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 11. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved November 2, 2001.)

## ACT 4

H.B. NO. 15

A Bill for an Act Relating to the Emergency Environmental Workforce.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The September 11, 2001, tragedy, resulting from terrorist attacks in New York, Virginia, and Pennsylvania, has changed the lives of Americans and the way government responds to acts of terrorism. Today, all levels of government across the nation are facing challenges to meet the needs of all constituents.

The federal government faces the monumental task of developing and implementing America's response to violent acts of terrorism and preparing an extensive network of security and intelligence to meet national and international needs. While New York faces the enormous tasks of rebuilding and restoring disrupted services to

its people, other state and local governments across the nation must deal with the “ripple effect” of a disrupted world economy.

Here in Hawaii, state and county leaders of executive and legislative branches of government have begun to assess the impact of September 11 on the local economy within the context of broader national and international economies. While the visitor industry has been the first segment of our local economy to suffer the effects of decreased leisure travel, other ancillary or related industries have been impacted as well.

Analysis and research are still needed to provide a clearer forecast as to the potential duration and depth of the visitor downturn.

While government assesses the State’s long-term needs and continues its efforts to lessen negative economic impacts of activities or undertakings beyond our control, immediate short-term solutions are needed for Hawaii’s people being negatively impacted with reduced work schedules or layoffs. Immediate solutions for immediate relief will require unprecedented levels of cooperation between state and local government, and between public and private entities, and bold yet productive proposals.

The purpose of this Act is to appropriate funds for the establishment of an emergency environmental workforce for short-term employment for individuals who have lost their jobs because of Hawaii’s recent economic downturn. Individuals willing to accept the challenge of a workforce job will assist the efforts to:

- (1) Isolate the spread of dengue fever;
- (2) Eradicate the miconia plant and other invasive plants; and
- (3) Reduce coqui frog and fire ant populations.

SECTION 2. There is established the emergency environmental workforce to be attached to The Research Corporation of the University of Hawaii for administrative purposes. The emergency environmental workforce shall:

- (1) Employ approximately four hundred to four hundred fifty individuals who were terminated from their jobs after the September 11 tragedy as a result of the local economic downturn. The individuals shall be employed as three-month contract employees;
- (2) Deploy contract employees to all island mayors certifying a need for environmental clearance and eradication services to supplement current services being provided for the isolation of dengue fever, the eradication of the miconia plant and other invasive plants, and the reduction of coqui frog and fire ant populations; and
- (3) Coordinate its efforts with the efforts of the invasive species committee on each island.

SECTION 3. The Research Corporation of the University of Hawaii shall:

- (1) Together with the Pacific Cooperative Studies Unit, develop a planning, administration, implementation, and evaluation strategy, including a program duration plan and a budget for contract and administrative expenses for the sum appropriated;
- (2) Consult with private employers with workforces, which have, or which may be, affected by layoffs from the economic downturn as a result of the September 11 tragedy to develop a recruitment and public information plan;
- (3) Develop a strategy for the interviewing and selection of program participants;
- (4) Work with island mayors requesting cleaning and eradication services to administer physical examinations, as may be necessary, to qualifying applicants prior to final contract offers;

- (5) Request that the attorneys employed or retained by the University of Hawaii prepare the necessary employment contracts to meet the objectives of the program on an expedited basis;
- (6) Submit review and assessment reports to the governor, the senate president, and the house speaker every sixty days for the duration of the program; and
- (7) Undertake all other necessary activities for program development and implementation.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the establishment of an emergency environmental workforce to be administered by The Research Corporation of the University of Hawaii.

The sum appropriated shall be expended by The Research Corporation of the University of Hawaii for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved November 2, 2001.)

## ACT 5

H.B. NO. 16

A Bill for an Act Relating to Procurement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The terrible terrorist incidents on September 11, 2001, resulted in an immense and tragic loss of life and security, and have truly stunned the nation. As a result, the United States has increased its vigilance and implemented numerous heightened security measures designed to guard against further attacks.

Due largely to the terrorist attacks and their far-ranging impacts, air travel throughout the country has decreased dramatically. This has had an especially damaging effect on Hawaii's economy because tourism, our main industry, is almost completely dependent on air travel. Airlines, hotels, and other businesses have been laying off significant numbers of employees. Consequently, Hawaii is facing what may be its worst economic crisis in history.

As part of the effort to revive the economy, the legislature finds that amending or repealing certain public contract requirements will enable government agencies to make timely awards of contracts and infuse needed moneys into businesses that are seeking ways to recover their losses and curtail numerous layoffs. The Hawaii public procurement code, chapter 103D, Hawaii Revised Statutes, treats small purchases of less than \$25,000 for goods, services, or construction, in such a way as to ensure administrative simplicity and as much competition as practicable.

Since September 11, 2001, business activity slowed down to a virtual standstill, causing the statewide number of initial claims filed for unemployment benefits to increase by more than two hundred per cent from the same period last year. The legislature further finds that the slowdown of business activity in the State, the resulting increase in unemployment benefit claims, and the inability of these unemployed residents to maintain their payments for their medical, food, and shelter costs poses an imminent danger to public health, safety, and welfare. The legislature believes that this imminent danger to public health, safety, and welfare presents a compelling state interest during this time of economic emergency to give preference to state residents for the limited number of jobs currently available in this State.

The purposes of this Act are to raise the small purchase thresholds and to ensure that the primary beneficiaries of the relaxed public contract requirements are state residents whose livelihood have been severely compromised by the events of September 11, 2001.

SECTION 2. Notwithstanding any provision of law to the contrary, including chapter 103D, Hawaii Revised Statutes, procurements of \$50,000 or less for goods and services shall be treated as small purchases under section 103D-305, Hawaii Revised Statutes.

SECTION 3. Notwithstanding any provision of law to the contrary, including chapter 103D, Hawaii Revised Statutes, construction contracts of less than \$250,000 shall be treated as small purchases under section 103D-305, Hawaii Revised Statutes; provided, each construction contract shall require a performance bond to be secured and delivered to the purchasing agency that is in a form prescribed by the rules of the policy board, executed by a surety company authorized to do business in this State, or otherwise secured in a manner satisfactory to the purchasing agency, in an amount equal to one hundred per cent of the price specified in the contract.

SECTION 4. All contracts entered into, or commencement of any established procedure prior to entering into a contract, including bid solicitation, under statutes or portions of statutes affected by this Act, shall continue to be honored until their termination. The provisions of this Act shall not be applied so as to impair any contract existing as of the effective date of this Act or to otherwise violate the provisions of either the Hawaii Constitution or the United States Constitution.

SECTION 5. (a) During the economic emergency period from September 11, 2001, to June 30, 2002, if the governor suspends any statute, rule, or order as authorized by the third special session of the 2001 Hawaii state legislature to facilitate the awarding of contracts for goods, services, or construction, all such contracts shall be awarded with a view toward revitalizing the economy of the State. For all such contracts not involving federal funds, preference shall be given to contractors who affirm that:

- (1) Immediately prior to the date of the governor's declaration of an economic emergency they were, and are on the date of any award of a contract, licensed to conduct business and other activities in the State, in good standing, and in full compliance with registration requirements, all tax laws, wage and hour, employment, insurance, worker's compensation, and employee health and benefits laws of the State; and
- (2) At least seventy-five per cent of their workforce consists of state residents. For purposes of this paragraph, a person shall be deemed to be a "state resident" if the person has lived continuously in the State for a period of six months prior to the effective date of this Act, and has not established residency in another state by living continuously therein or filing tax returns in that jurisdiction during that time.

(b) Any contractor found to have made a false affirmation under subsection (a) may have its offer rejected and may be debarred or suspended pursuant to section 103D-702, Hawaii Revised Statutes. If work on a project has commenced prior to institution of a challenge against the contractor's affirmation, the contractor may be permitted to continue working during resolution of the challenge.

(c) The preference provisions of this section shall also be applied to all contracts with a total value of \$100,000 or more under section 3.

SECTION 6. The names of all contractors, a brief description of the contract, and the amount of each contract awarded, shall be submitted to the legislature in a monthly report regarding every construction contract with a total value of \$100,000 or more awarded under the increased small purchase dollar ceilings pursuant to this Act or pursuant to a suspension of any statute, rule, or order in the exercise of the governor's powers.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to that extent the provisions of this Act are severable.

SECTION 8. This Act shall take effect upon its approval and shall be repealed on June 30, 2002.

(Approved November 2, 2001.)

## ACT 6

S.B. NO. 2

A Bill for an Act Relating to Temporary Health Insurance for Unemployed Persons.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The terrorist attacks in New York, Virginia, and Pennsylvania on September 11, 2001, have significantly raised global concerns about the safety of air travel. Because Hawaii is an island destination, air travel is the primary means of arrival for the large majority of Hawaii's visitors. The current concern with air travel has devastated tourism, the State's primary industry, and the ripple effect has been felt in all sectors of our economy.

The downturn in our visitor industry has caused significant numbers of our residents to be victims of employment furloughs, layoffs, reduced work hours, and terminations. While these former employees may obtain some financial relief through unemployment insurance benefits, they may not, for financial or other reasons, be able to continue their health care insurance coverage.

The purpose of this Act is to help unemployed persons to maintain health care coverage by providing a temporary program of health insurance.

SECTION 2. There is established the temporary health insurance for unemployed persons program to provide temporary health care coverage for persons who have lost employment on or after September 11, 2001.

To be eligible to participate in this program the person shall:

- (1) Have lost the person's health insurance as a result of a furlough, layoff, reduced work hours, or termination of employment on or after September 11, 2001;
- (2) Not be eligible for any health insurance coverage from another source; and
- (3) Agree to pay for the costs of the person's coverage premium.

This program shall have a benefit package similar to the basic benefits provided in the department's QUEST-Net program and shall be administered by the department of human services.

SECTION 3. If a person is entitled to continue health insurance coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA), the

person may apply for reimbursement of payments made for the purpose of continuing the person's health insurance medical and prescription drug coverage up to the following monthly amounts:

Single: \$125.00

Family: \$315.00

The total reimbursement a person may collect under this section shall be for three months of coverage from the effective date of the individual's loss of coverage.

A person is eligible for reimbursement of payments if:

- (1) The person became unemployed, furloughed, or suffered a reduction in work hours which has resulted in the loss of the person's employment related group health insurance which occurred on or after the September 11, 2001, disaster, and is ineligible for any other insurance through the person's spouse or parents;
- (2) The person is entitled to continue health insurance coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA);
- (3) The person is not eligible for any other employment related group health coverage reimbursement or subsidy aimed to assist the unemployed person in continuing the person's group health insurance coverage;
- (4) The person certifies in writing the amount paid by the person for prescription and medical coverage for the three-month period beginning on the effective date of the person's loss of coverage; and
- (5) The person's employer certifies in writing that the person is not entitled to any other subsidy offered by the employer or the employer's health insurer.

SECTION 4. There is appropriated out of the general funds of the State of Hawaii the sum of \$1,587,600 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$1,360,800 or so much thereof as may be necessary for fiscal year 2002-2003 for administration of the program established by this Act.

The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 5. There is appropriated out of the general funds of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the reimbursement of payments made under this Act.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 6. This Act shall take effect on December 1, 2001, and shall be repealed on December 21, 2002.

(Approved November 2, 2001.)

## ACT 7

S.B. NO. 3

A Bill for an Act Relating to Unemployment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In the aftermath of the September 11th terrorist attacks and the damaging effect on the airline and visitor industries, Hawaii's economy has experi-

enced an immediate and significant downturn with an unprecedented number of workers being laid off.

The purpose of this Act is to create a temporary program providing additional benefits to unemployed workers by extending their unemployment insurance (UI) benefits. The funds for state additional benefits (SAB) payable under this Act shall be withdrawn from the unemployment compensation trust fund pursuant to sections 383-121 to 383-123, Hawaii Revised Statutes. If necessary, additional moneys may be allocated from the state general fund and used for the payment of expenses incurred for the administration of SAB.

**SECTION 2.** For the purpose of this Act:

“Applicable benefit year” means the individual’s current benefit year if the individual has an unexpired benefit year or the individual’s most recent benefit year for regular benefits ending on or after September 11, 2001.

“Benefit year” shall be as defined in section 383-1, Hawaii Revised Statutes.

“Continued claim certification” means an application that certifies the completion of a week of total, part-total, or partial unemployment to claim benefits for a week of unemployment as defined in section 12-5-73, Hawaii Administrative Rules.

“Eligibility period” for the receipt of SAB shall be the period beginning on the first Sunday following the date that this Act is approved by the governor and ending on June 30, 2002.

“Initial claim” includes a new claim, an additional claim, or a reopened claim as defined in section 12-5-73, Hawaii Administrative Rules.

“Regular benefits” means the unemployment insurance benefits paid on an initial claim filed under chapter 383, Hawaii Revised Statutes, except as provided for in sections 383-168 through 383-176, Hawaii Revised Statutes.

“State additional benefits” or “SAB” means the unemployment compensation benefits payable under this Act.

“Week of unemployment” shall be as defined in section 383-1, Hawaii Revised Statutes.

**SECTION 3.** An individual shall be eligible to receive a payment of SAB with respect to a week of unemployment in accordance with the provisions of this Act; provided that:

- (1) The individual filed an initial claim or continued claim certification for regular benefits on or after September 11, 2001, and was paid benefits for the period after September 11, 2001;
- (2) The week of unemployment falls within the eligibility period;
- (3) The individual exhausted all rights to receive regular benefits under chapter 383, Hawaii Revised Statutes, on or after September 11, 2001, or if regular benefits were not exhausted, the individual’s applicable benefit year expired on or after September 11, 2001;
- (4) The individual is not eligible to receive unemployment benefits under federal law or the laws of any other state, or any federal or federal-state extended benefits program, after September 11, 2001;
- (5) Any additional or extended unemployment benefits paid under federal law or the laws of any other state, or any federal or federal-state extended benefits program, shall not be deducted from the total SAB amount the individual is eligible for, but shall be in addition to SAB, and SAB shall be paid only when such federal, federal-state, or other state’s extended benefits are not payable to the individual; and



- (6) The individual has met all other conditions of eligibility that apply to regular benefits as required under chapter 383, Hawaii Revised Statutes, except that no individual shall be required to serve a waiting period in the eligibility period.

SECTION 4. (a) The weekly SAB amount payable to an individual for a week of total unemployment in the eligibility period shall be an amount equal to the weekly benefit amount payable in the individual's applicable benefit year.

(b) The maximum SAB amount payable to any eligible individual with respect to the individual's applicable benefit year shall be thirteen times the individual's weekly SAB amount.

(c) No SAB shall be payable for any week beginning prior to the eligibility period or after the close of the eligibility period.

SECTION 5. Benefits paid to an individual under the SAB program shall be charged against the account of any of the individual's base period employers except for employers on a contributory plan under section 383-61, Hawaii Revised Statutes.

SECTION 6. Effective for calendar year 2002 only, section 383-68, Hawaii Revised Statutes, shall not apply and the contribution rate schedule shall be maintained at schedule C. The governor may provide for a schedule change for the remainder of the calendar year 2002 only by issuance of a proclamation specifically invoking the change and the effective date of the change.

SECTION 7. Except when the result would be inconsistent with the provisions of this Act, the provisions of chapter 383, Hawaii Revised Statutes, which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, SAB.

SECTION 8. No provision contained in this Act shall apply to the payment of SAB if such provision conflicts with federal statutes and jeopardizes the receipt of federal administrative funding and certification for the Federal Unemployment Tax Act (FUTA) employer tax offset credit.

In the event any provision in this Act jeopardizes the receipt of federal funds, the governor is authorized to revise any provision of this Act to the extent required to maximize the receipt of federal funds. The governor shall promptly report any such revision and reasons therefor to the legislature at the next legislative session thereafter.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$560,000 or so much thereof as may be necessary for fiscal year 2001-2002 to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of labor and industrial relations.

SECTION 10. This Act shall take effect upon its approval and shall be repealed on June 30, 2002.

(Approved November 2, 2001.)

## ACT 8

S.B. NO. 5

A Bill for an Act Relating to Filing Thresholds for Certain Taxes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The terrorist attacks on September 11, 2001, have stunned the nation and have had far-ranging impacts that threaten to paralyze our national economy. As a result, we have experienced a dramatic decrease in air travel, which has a particularly damaging effect on Hawaii's tourism-based economy. To counteract these negative effects, this Act increases the filing thresholds for taxpayers filing withholding, general excise, use, transient accommodations, and rental motor vehicle and tour vehicle surcharge tax returns.

Employers are responsible for withholding a portion of their employees' wages as income tax and paying the amounts withheld to the department of taxation on the employees' behalf. Withholding returns with less than \$100,000 annual liability are due monthly on or before the fifteenth day of the calendar month following the month for which the taxes were withheld. When the total tax liability is less than \$1,000 for the calendar year, returns may be filed quarterly on or before the fifteenth day of the month after the close of each quarter. This Act increases the threshold for quarterly filing to \$5,000.

The periodic general excise or use tax return (Form G-45) must be filed on a monthly, quarterly, or semiannual basis on or before the last day of the month following the close of the reporting period. Currently, the return and tax may be filed on a quarterly basis if the taxpayer's liability for the calendar or fiscal year is \$2,000 or less and on a semi-annual basis if the total liability is \$1,000 or less. The filing thresholds were last increased in 1985. These same thresholds are applicable to a taxpayer filing a transient accommodations tax return and rental motor vehicle and tour vehicle surcharge tax return.

The purpose of this Act is to assist taxpayers by increasing the thresholds for taxpayers filing withholding, general excise, use, transient accommodations, and rental motor vehicle and tour vehicle surcharge tax returns. This will reduce the filing burden of taxpayers, thereby encouraging compliance and providing greater cash flow for taxpayers.

For example, a taxpayer with a gross income of \$25,000 per year, subject to the general excise tax, now must file on a quarterly basis. The return for the third calendar quarter ending September 30, 2001, is currently due on October 31, 2001. This Act will allow that taxpayer to file on a semiannual basis. The return for the third and fourth calendar quarters would not have to be filed until January 31, 2002. Similar savings both in cash flow and decrease in paperwork will be felt by those who will only need to file quarterly instead of monthly and for the payment of the other taxes as well.

SECTION 2. Section 235-62, Hawaii Revised Statutes, is amended to read as follows:

**"§235-62 Return and payment of withheld taxes.** Every employer required by this chapter to withhold taxes on wages paid in any month shall make a return of such wages to the department of taxation on or before the fifteenth day of the calendar month following the month for which the taxes have been withheld; provided that each employer required to make a return under this section whose liability for taxes withheld exceeds \$100,000 a year, shall make a return of wages and taxes withheld to the department on or before the tenth day of the calendar month following the month for which the taxes have been withheld. The return shall

be in such form, including computer printouts and the like, and contain such information as may be prescribed by the director of taxation. The return shall be filed with the collector of the taxation district in which the employer has the employer's principal place of business or with the director at Honolulu if the employer has no place of business in the State. Every return required under this section shall be accompanied by a remission of the complete amount of tax withheld, as reported in the return. If the director believes collection of the tax may be in jeopardy, the director may require any person required to make a return under this section to make such return and pay such tax at any time. The director may grant permission to employers, whose liability to pay over the taxes withheld as provided in this section shall not exceed ~~[\$1,000]~~ \$5,000 a year, to make returns and payments of the taxes due on a quarterly basis during the calendar year, the returns and payments to be made on or before the fifteenth day of the calendar month after the close of each quarter, to wit, on or before April 15, July 15, October 15, and January 15. The director may grant permission to employers to make monthly payments based on an estimated quarterly liability; provided that the employer files a reconciliation return on or before the fifteenth day of the calendar month after the close of each quarter during the calendar year as provided by this section. The director, for good cause, may extend the time for making returns and payments, but not beyond the fifteenth day of the second month following the regular due date of the return. With respect to wages paid out of public moneys, the director, in the director's discretion, may prescribe special forms for, and different procedures and times for the filing of, the returns by employers paying the wages, or may waive the filing of any returns upon the conditions and subject to rules the director may prescribe."

SECTION 3. Section 237-30, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Notwithstanding subsection (a), the director of taxation, for good cause, may permit a taxpayer to file the taxpayer's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the last day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April 30, July 31, October 31, and January 31 or, for fiscal year taxpayers, on or before the last day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed ~~[\$2,000;]~~ \$4,000; or
- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made on or before the last day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July 31 and January 31 or, for fiscal year taxpayers, on or before the last day of the seventh month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed ~~[\$1,000;]~~ \$2,000.

The director, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability, provided the taxpayer files a reconciliation return at the end of each quarter or at the end

of each six-month period during the calendar or fiscal year, as provided in this section.

(c) If a taxpayer filing the taxpayer's return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the taxpayer's return or the payment of the taxes due thereon, or if the liability of a taxpayer, who possesses a permit to file the taxpayer's return and to make payments on a semiannual basis exceeds [~~\$1,000~~] \$2,000 in general excise taxes during the calendar year or exceeds [~~\$2,000~~] \$4,000 in general excise taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the general excise tax, the director may, at any time, revoke a taxpayer's permit, in which case the taxpayer will then be required to file the taxpayer's return and make payments thereon as herein provided in subsection (a).''

SECTION 4. Section 237D-6, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Notwithstanding subsection (a), the director of taxation, for good cause, may permit a taxpayer to file the taxpayer's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the last day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April 30, July 31, October 31, and January 31 or, for fiscal year taxpayers, on or before the last day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed [~~\$2,000;~~] \$4,000; or
- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before the last day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July 31 and January 31 or, for fiscal year taxpayers, on or before the last day of the seventh month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed [~~\$1,000;~~] \$2,000.

The director, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability; provided that the taxpayer files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section.

(c) If a taxpayer filing the taxpayer's return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the taxpayer's return or the payment of the taxes due thereon, or if the liability of a taxpayer, who possesses a permit to file the taxpayer's return and to make payments on a semiannual basis exceeds [~~\$1,000~~] \$2,000 in transient accommodations taxes during the calendar year or exceeds [~~\$2,000~~] \$4,000 in transient accommodations taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would

unduly jeopardize the proper administration of this chapter, including the assessment or collection of the transient accommodations tax, the director, at any time, may revoke a taxpayer's permit, in which case the taxpayer shall then be required to file the taxpayer's return and make payments thereon as provided in subsection (a)."

SECTION 5. Section 251-4, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Notwithstanding subsection (a), the director, for good cause, may permit a person to file the person's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the last day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April 30, July 31, October 31, and January 31 or, for fiscal year taxpayers, on or before the last day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar or fiscal year under this chapter will not exceed [~~\$2,000;~~] \$4,000; or
- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before the last day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July 31 and January 31 or, for fiscal year taxpayers, on or before the last day of the seventh month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar or fiscal year under this chapter will not exceed [~~\$1,000;~~] \$2,000.

The director, for good cause, may permit a person to make monthly payments based on the person's estimated quarterly or semiannual liability; provided that the person files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section.

(c) If a person filing the return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the return or the payment of the surcharge taxes due thereon, or if the liability of a person, who possesses a permit to file the return and to make payments on a semiannual basis exceeds [~~\$1,000~~] \$2,000 in surcharge taxes during the calendar year or exceeds [~~\$2,000~~] \$4,000 in surcharge taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the surcharge tax, the director, at any time, may revoke a person's permit, in which case the person then shall be required to file the person's return and make payments thereon as provided in subsection (a)."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval; provided that:

- (1) Section 2 shall apply to withholding taxes for periods beginning on or after October 1, 2001;

- (2) Section 3 shall apply to gross income or gross proceeds received on or after October 1, 2001, and all taxes accruing on or after October 1, 2001;
- (3) Section 4 shall apply to gross rental or gross rental proceeds received on or after October 1, 2001, and all taxes accruing on or after October 1, 2001; and
- (4) Section 5 shall apply to the rental of each rental motor vehicle and the use of each tour vehicle on or after October 1, 2001.

(Approved November 2, 2001.)

## ACT 9

S.B. NO. 6

A Bill for an Act Relating to Taxation of Transportation Service Providers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The terrorist attacks on September 11, 2001, have stunned the nation and have had far-ranging impacts that threaten to paralyze our national economy. As a result, we have experienced a dramatic decrease in air travel, which has a particularly damaging effect on Hawaii's tourism-based economy.

To counteract these negative effects, this Act subjects transportation service providers to the general excise tax under section 237-13(6), Hawaii Revised Statutes, in lieu of the public service company tax imposed under section 239-6, Hawaii Revised Statutes.

The public service company tax is imposed on transportation service providers including motor carriers, common carriers by water, and contract carriers, and is a means of taxing the carrier's personal property, tangible and intangible, including the going concern value. The tax is generally measured at the rate of four per cent on the gross income from the provider's public service company business earned in the previous taxable year. Because the public service company tax is based upon the prior year's gross income, the tax may not correspond to the taxpayer's current year's receipts or activities.

Under improving economic conditions, the public service company tax is favorable to transportation service providers because the provider would pay a tax equal to four per cent of its prior year's income, which would be less than a four per cent tax measured by its higher current year's income. However, in a declining market place, the provider may have to pay more in taxes than its current gross income can support.

The purpose of this Act is to allow transportation service providers to report under the general excise tax chapter instead of the public service company tax system, which would allow them to pay a four per cent tax based on their actual income for the current period. This will more than likely result in tax savings to them given the anticipated economic climate.

SECTION 2. Section 237-7, Hawaii Revised Statutes, is amended to read as follows:

**"§237-7 "Service business or calling", defined.** "Service business or calling" includes all activities engaged in for other persons for a consideration which involve the rendering of a service, including professional and transportation services, as distinguished from the sale of tangible property or the production and

sale of tangible property. "Service business or calling" does not include the services rendered by an employee to the employee's employer."

SECTION 3. Section 237-18, Hawaii Revised Statutes, is amended to read as follows:

**"§237-18 Further provisions as to application of tax.** (a) Where a coin operated device produces gross income which is divided between the owner or operator of the device, on the one hand, and the owner or operator of the premises where the device is located, on the other hand, the tax imposed by this chapter shall apply to each such person with respect to the person's portion of the proceeds, and no more.

(b) Where gate receipts or other admissions are divided between the person furnishing or producing a play, concert, lecture, athletic event, or similar spectacle (including any motion picture showing) on the one hand, and a promoter (including any proprietor or other operator of a motion picture house) offering the spectacle to the public, on the other hand, the tax imposed by this chapter, if the promoter is subject to the tax imposed by this chapter, shall apply only to the promoter measured by the whole of the proceeds, and the promoter shall be authorized to deduct and withhold from the portion of the proceeds payable to the person furnishing or producing the spectacle the amount of the tax payable by the person upon such portion. No tax shall apply to a promoter with respect to such portion of the proceeds as is payable to a person furnishing or producing the spectacle, who is exempted by section 237-23 from taxation upon such activity.

(c) Where, through the activity of a person taxable under section 237-13(6), a product has been milled, processed, or otherwise manufactured upon the order of another taxpayer who is a manufacturer taxable upon the value of the entire manufactured products, which consists in part of the value of the services taxable under section 237-13(6), so much gross income as is derived from the rendering of the services shall be subjected to tax on the person rendering the services at the rate of one-half of one per cent, and the value of the entire product shall be included in the measure of the tax imposed on the other taxpayer as elsewhere provided.

(d) Where, through the activity of a person taxable under section 237-13(6), there have been rendered to a cane planter services consisting in the harvesting or hauling of the cane, or consisting in road maintenance, under a contract between the person rendering the services and the cane planter, covering the services and also the milling of the sugar, the services of harvesting and hauling the cane and road maintenance shall be treated the same as the service of milling the cane, as provided by subsection (c), and the value of the entire product, manufactured or sold for the cane planter under the contract, shall be included in the measure of the tax imposed on the person as elsewhere provided.

(e) Where insurance agents, including general agents, subagents, or solicitors, who are not employees and are licensed pursuant to chapter 431, or real estate brokers or salespersons, who are not employees and are licensed pursuant to chapter 467, produce commissions which are divided between such general agents, subagents, or solicitors, or between such real estate brokers or salespersons, as the case may be, the tax levied under section 237-13(6) or under section 237-16 as to real estate brokers or salespersons, or under section 237-13(7) as to insurance general agents, subagents, or solicitors shall apply to each such person with respect to the person's portion of the commissions, and no more.

(f) Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services and the travel agency or tour packager, the tax imposed by

this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection "tourism related services" means catamaran cruises, canoe rides, dinner cruises, lei greetings, transportation included in a tour package, sightseeing tours not subject to chapter 239, admissions to luaus, dinner shows, extravaganzas, cultural and educational facilities, and other services rendered directly to the customer or tourist, but only if the providers of the services other than air transportation are subject to a four per cent tax under this chapter or chapter 239.

(g) Where transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates and the gross income is divided between the operator of transient accommodations on the one hand and the travel agency or tour packager on the other hand, the tax imposed by this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection, the words "transient accommodations" and "operator" shall be defined in the same manner as they are defined in section 237D-1.

(h) Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carriers' respective portion of the proceeds.

As used in this subsection:

"Carrier" means a person who engages in transportation, and does not include a person such as a freight forwarder or tour packager who provides transportation by contracting with others, except to the extent that such person oneself engages in transportation.

"Contract carrier" means a person other than a public utility as defined under section 239-2 or taxicab, which under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air.

"Motor carrier" means a common carrier or contract carrier transporting persons or property for compensation on the public highways, other than a public utility as defined under section 239-2 or taxicab.

"Public highways" has the meaning defined by section 264-1 including both state and county highways, but operation upon rails shall not be deemed transportation on the public highways."

SECTION 4. Section 239-6, Hawaii Revised Statutes, is amended to read as follows:

**"§239-6 Airlines, certain carriers.** (a) There shall be levied and assessed upon each airline a tax of four per cent of its gross income each year from the airline business; provided that if an airline adopts a rate schedule for students in grade twelve or below traveling in school groups providing such students at reasonable hours a rate less than one-half of the regular adult fare, the tax shall be three per cent of its gross income each year from the airline business.

(b) There shall be levied and assessed upon each motor carrier, each common carrier by water, and upon each contract carrier other than a motor carrier, a tax of four per cent of its gross income each year from the motor carrier or contract carrier business.

(c) The tax imposed by this section is a means of taxing the personal property of the airline or other carrier, tangible and intangible, including going concern value, and is in lieu of the tax imposed by chapter 237 but is not in lieu of any other tax.



(d) Notwithstanding subsections (a), (b), and (c), the rate of tax upon the portion of the gross income of a motor carrier which consists of the receipts from the sale of its products or services to a contractor shall be as follows:

- (1) In calendar year 2000, 3.5 per cent;
- (2) In calendar year 2001, 3.0 per cent;
- (3) In calendar year 2002, 2.5 per cent;
- (4) In calendar year 2003, 2.0 per cent;
- (5) In calendar year 2004, 1.5 per cent;
- (6) In calendar year 2005, 1.0 per cent; and
- (7) In calendar year 2006, and thereafter, 0.5 per cent;

provided that there is a resale of the products or services and the resale by the contractor is subject to taxation at the highest rate under section 237-13 or 237-16; the gross income of the motor carrier is not divided as provided in the definition of "gross income" in section 239-2 for the tax imposed under this chapter or chapter 237; and the gross income of the motor carrier from the sale of its products or services to the contractor is not subject to a deduction under chapter 237 by the contractor; and in the case of services provided by the motor carrier, the benefit of the service passes to the customer of the contractor as an identifiable element of the contracting or service provided by the contractor and does not constitute overhead as defined in section 237-1.

The department shall have the authority to implement the tax rate changes in paragraphs (1) through (7) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes.

For purposes of this subsection, "contractor" has the same meaning as defined in section 237-6.

(e) Notwithstanding subsections (a) through (d), beginning on October 1, 2001, the tax under this chapter shall not apply to airlines, motor carriers, common carriers by water, and contract carriers other than motor carriers; provided that the gross income received on or after October 1, 2001, by these carriers shall be subject to the tax imposed under chapter 237. For the taxable year in which October 1, 2001 occurs, the tax imposed and due under this chapter for the affected carriers shall be abated in an amount equal to:

- (1) The tax imposed on the first day of the taxpayer's taxable year in which October 1, 2001 occurs;
- (2) Divided by the number of months in the taxpayer's affected taxable year; and
- (3) Multiplied by the number of months in the taxpayer's taxable year remaining after September 30, 2001."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that the gross income received on or after October 1, 2001, by transportation service providers shall be subject to the tax imposed under chapter 237, Hawaii Revised Statutes.

(Approved November 2, 2001.)

## ACT 10

S.B. NO. 8

A Bill for an Act Relating to Income Tax Credits.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§235- Residential construction and remodeling tax credit.** (a) There shall be allowed to each taxpayer, subject to the taxes imposed by this chapter, a residential construction and remodeling tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the tax credit claimed under this section by the taxpayer in all years for which the credit is available shall be limited to four per cent of the residential construction or remodeling costs incurred; provided that the costs shall not exceed \$250,000 in the aggregate for each unit; and that the costs are incurred before July 1, 2002.

In the case of a partnership, S corporation, estate, trust, or association of apartment owners, the tax credit allowable is for construction or remodeling costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the construction or remodeling cost for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(b) The credit allowed under this section shall be claimed against the net income tax liability, if any, imposed by this chapter for the taxable year in which the tax credit is properly claimed.

(c) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims, including amended claims, for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(d) The director of taxation shall prepare any forms that may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(e) The tax credit allowed under this section shall be available for taxable years beginning after December 31, 2000, and shall not be available for taxable years beginning after December 31, 2003.

(f) To qualify for the income tax credit, the taxpayer shall be in compliance with all applicable federal, state, and county statutes, rules, and regulations.

(g) As used in this section:

“Construction or remodeling cost” means any costs incurred after December 31, 2000, for plans, design, construction, and equipment related to new construction, alterations, or modifications to residential real property.

“Net income tax liability” means income tax liability reduced by all other credits allowed under this chapter.”

SECTION 2. Section 235-110.4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter and chapter 237D, an income tax credit, which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the credit shall be ~~[four]~~ ten per cent of the construction or renovation costs incurred during the taxable year for each qualified hotel facility located in Hawaii, and shall not include the construction or renovation costs for which another credit was claimed under this chapter for the taxable year~~[-]~~; provided that the construction or renovation costs are incurred before July 1, 2003.

In the case of a partnership, S corporation, estate, trust, association of apartment owners of a qualified hotel facility, time share owners association, or any developer of a time share project, the tax credit allowable is for construction or renovation costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the construction or renovation cost for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.”

2. By amending subsection (c) to read:

“(c) If the tax credit under this section exceeds the taxpayer’s income tax liability, the excess of credit over liability ~~[shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than \$1-]~~ may be used as a credit against the taxpayer’s income tax liability in subsequent years until exhausted. All claims for a tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.”

3. By amending subsection (e) to read:

“(e) The tax credit allowed under this section shall be available for taxable years beginning after December 31, 1998, and shall not be available for taxable years beginning after December 31, ~~[2002-]~~ 2005.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval; provided that:

- (1) The amount of the tax credit under section 235-110.4(a), Hawaii Revised Statutes, amended by section 2 of this Act shall be four per cent for any hotel construction and renovation costs incurred prior to the effective date of this Act; and
- (2) Section 2(1) and 2(2) of this Act shall be repealed on June 30, 2003, and section 235-110.4(a) and (c), Hawaii Revised Statutes, shall be reenacted in the form in which it read prior to the effective date of this Act.

(Approved November 2, 2001.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 11**

S.B. NO. 10

A Bill for an Act Making an Appropriation for Marketing and Promoting the Safety of and Increased Security at State Airports.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The terrible terrorist incidents in New York, Virginia, and Pennsylvania, on September 11, 2001, resulted in an immense and tragic loss of life and security, and have truly stunned the nation. As a result, the United States has increased its vigilance and implemented numerous heightened security measures designed to guard against further attacks. Temporary closure of the nation's airports and suspension of civilian air travel were only two of many such measures. Increased security has been implemented at all airports, including the airports in Hawaii.

Due largely to the terrorist attacks and their far-ranging impacts, air travel throughout the country has fallen dramatically. This has had an especially damaging effect on Hawaii's economy because tourism, our main industry, is almost completely dependent on air travel. In spite of emergency federal subsidies, airlines have been laying off significant numbers of employees and cutting the number of flights to and from Hawaii. Consequently, Hawaii is facing what may be its worst economic crisis in history. As part of the effort to stimulate the economy and encourage travel to Hawaii, the legislature finds that the State should implement a marketing program emphasizing the use of state airports and promoting the safety of and increased security at all state airports in Hawaii.

The purpose of this Act is to appropriate funds to the department of transportation to market and promote the safety of and increased security at all state airports.

SECTION 2. There is appropriated out of the airport revenue fund (TRN 195) the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2001—2002 to be expended for marketing and promoting the safety of and increased security at state airports; provided that in expending the sums appropriated hereunder, the department of transportation shall:

- (1) Obtain prior approval from the Federal Aviation Administration on the use of these funds for marketing and promotion plans;
- (2) Comply with all applicable rules, regulations, conditions, and restrictions, including any imposed by the federal government, unless and to the extent the State obtains approval to be excused from such compliance; and

- (3) Not violate any covenants or contractual obligations under or relating to bonds or other types of financing issued or obtained by the department.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 3. This Act shall take effect upon its approval.

(Approved November 2, 2001.)

**ACT 12**

S.B. NO. 11

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The terrible tragedies in New York, Virginia, and Pennsylvania on September 11, 2001, caused by terrorist attacks have stunned the nation. As a result, the United States has increased its vigilance and implemented numerous heightened security measures designed to guard against further attacks. Temporary closure of the nation's airports was just one of many measures. Increased security measures have been implemented at all airports, including the airports in Hawaii. Due largely to the terrorist attacks and their far-ranging impacts, air travel throughout the country has fallen dramatically. This has had an especially damaging effect on Hawaii's economy because tourism, our main industry, is almost completely dependent on air travel. Airlines have been laying off significant numbers of employees and cutting the number of flights to and from Hawaii. Consequently, Hawaii is facing what may be its worst economic crisis in history. As part of the effort to stimulate the economy and encourage travel to Hawaii, the legislature finds that the security measures required by this Act, relating to airports, harbors, and highways, should be implemented immediately.

SECTION 2. There is appropriated out of the airport revenue fund of the State of Hawaii the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be expended for security measures at state airports as follows:

<u>Program I.D.</u>	<u>Airport</u>	<u>FY 2001-2002</u>
TRN 102	Honolulu international	\$6,400,000
TRN 104	General aviation	\$ 75,000
TRN 111	Hilo international	\$ 600,000
TRN 114	Kona international	\$ 960,000
TRN 131	Kahului	\$1,300,000
TRN 135	Kapalua	\$ 50,000
TRN 141	Molokai	\$ 50,000
TRN 151	Lanai	\$ 50,000
TRN 161	Kauai	\$ 515,000

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 3. There is appropriated out of the interdepartmental transfer fund the sum of \$2,264,000 or so much thereof as may be necessary for fiscal year 2001-

2002 to establish thirty-six full-time equivalent (36.00 FTE) permanent sheriffs positions to provide security services at the Honolulu international airport:

<u>Program I.D.</u>	<u>Program</u>	<u>FY2001-2002</u>
PSD 503	SHERIFF	36.00* \$2,264,000

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 4. There is appropriated out of the airport revenue fund of the State of Hawaii the sum of \$1,480,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be expended for planning, designing, improving, acquiring, constructing, installing, or equipping security improvements at various state airport locations.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 5. There is appropriated out of the airport revenue fund of the State of Hawaii the sum of \$13,314,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be expended for planning, designing, improving, acquiring, constructing, installing, or equipping airport improvements relating to the renewal, renovation, upgrade, or maintenance of facilities at various state airport locations.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 6. There is appropriated out of the harbor special fund of the State of Hawaii the sum of \$1,212,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be expended for security measures at state harbors as follows:

<u>Program I.D.</u>	<u>Harbor</u>	<u>FY2001-2002</u>
TRN 301	Honolulu	\$606,000
TRN 311	Hilo	\$202,000
TRN 331	Kahului	\$202,000
TRN 361	Nawiliwili	\$202,000

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 7. There is appropriated out of the harbor special fund of the State of Hawaii the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be expended for planning, designing, improving, acquiring, constructing, installing, or equipping security improvements at various state harbor locations.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 8. There is appropriated out of the state highway fund of the State of Hawaii the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be expended for security measures for state highways.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 9. Notwithstanding any law or any provision of this Act to the contrary, the appropriations made for capital improvement projects authorized under

this Act in sections 4, 5, and 7 shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all appropriations, which are unencumbered as of June 30, 2003, shall lapse as of that date to the fund from which the appropriation is made.

SECTION 10. In expending the sums appropriated in this Act, the department of transportation shall:

- (1) Comply with all applicable rules, regulations, conditions, and restrictions, including any imposed by the federal government, unless and to the extent the State obtains approval to excuse such compliance; and
- (2) Not violate any covenants or contractual obligations under or relating to bonds or other types of financing issued or obtained by the department.

SECTION 11. This Act shall take effect upon its approval.

(Approved November 2, 2001.)

**ACT 13**

**S.B. NO. 12**

A Bill for an Act Relating to the Emergency Budget and Reserve Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The tragic events of September 11, 2001, thrust the United States and Hawaii into an economic whirlpool. The repercussions of the devastation in New York and Washington, D.C., were felt across the nation, and have had especially serious, negative effects on Hawaii's economy. It is clear that unless the State acts quickly and decisively, our economic downward spiral will continue.

The emergency budget and reserve fund was established by the legislature in 1999 to serve as a temporary source of supplemental funding for the State during times of crisis like the one we face today. The legislature finds that an appropriation of \$33,270,403 for fiscal year 2001-2002 into the emergency budget and reserve fund is necessary to allow the State to provide for its public health, safety, and welfare needs.

SECTION 2. There is appropriated out of the Hawaii tobacco settlement special fund the sum of \$33,270,403 or so much thereof as may be necessary for fiscal year 2001—2002 to be deposited into the emergency budget and reserve fund.

The sum appropriated shall be expended by the department of health for the purpose of this Act.

SECTION 3. This Act shall take effect upon its approval.

(Approved November 2, 2001.)

## ACT 14

S.B. NO. 13

A Bill for an Act Relating to State Finances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Hawaii's recovering economy suffered a serious setback as a result of the tragedy of September 11, 2001. One way to mitigate the negative impact on the State's economy, as well as to enhance Hawaii's position in the nation as an education center and as a leader in health care, is to support the University of Hawaii's health and wellness center, including a new medical school facility. To help bolster our flagging construction industry and to promote education in the State, the legislature finds that it is in the best interests of the State to:

- (1) Authorize construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu for the University of Hawaii;
- (2) Authorize the board of regents of the University of Hawaii to issue revenue bonds to pay for the university health and wellness center; and
- (3) Allow a portion of the moneys in the Hawaii tobacco settlement special fund to be used to pay principal of and interest on, and to generate required coverage, if any, for, any revenue bonds issued by the board of regents of the University of Hawaii to finance construction of a university health and wellness center.

SECTION 2. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The fund shall be used for the purpose of receiving, allocating, and appropriating the tobacco settlement moneys as follows:

- (1) ~~[Forty]~~ Twenty-four and one-half per cent shall be appropriated into the emergency and budget reserve fund under section 328L-3;
- (2) Thirty-five per cent shall be appropriated to the department for ~~[purpose]~~ purposes of section 328L-4; [and]
- (3) ~~[Twenty-five]~~ Twelve and one-half per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section 328L-5[-]; and
- (4) Twenty-eight per cent shall be appropriated into the university revenue-undertakings fund created in section 306-10, to be applied solely to the payment of the principal of and interest on, and to generate required coverage, if any, for, revenue bonds issued by the board of regents of the University of Hawaii to finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu, for the succeeding fiscal year; provided that any moneys in excess of the amount required to pay principal of and interest on, and to generate required coverage, if any, for such revenue bonds in any fiscal year, shall be transferred to the emergency and budget reserve fund under section 328L-3, and the Hawaii tobacco prevention and control trust fund under section 328L-5, in the succeeding fiscal year, in the same proportion as to the amount of moneys appropriated to those funds in accordance with this subsection.”

SECTION 3. Section 328L-5, Hawaii Revised Statutes, is amended as follows:

- (1) By amending subsection (a) to read:



“(a) There is established the Hawaii tobacco prevention and control trust fund as a separate fund of a nonprofit entity having a board of directors and qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, into which shall be deposited ~~[twenty-five per cent of]~~ moneys received as provided under section 328L-2(b)(3). The director of health with the concurrence of the governor, shall select, in accordance with law, the entity based upon the proven record of accomplishment of the entity in administering a similar trust fund.”

(2) By amending subsection (c) to read:

“(c) The entity selected under subsection (a) ~~[shall expend moneys from the Hawaii tobacco prevention and control trust fund]~~, for each fiscal year, may expend up to fifty per cent of the total market value of the Hawaii tobacco prevention and control trust fund on the preceding June 30, for tobacco prevention and control, including but not limited to, reducing cigarette smoking and tobacco use among youth and adults through education and enforcement activities, and controlling and preventing chronic diseases where tobacco is a risk factor.”

SECTION 4. There is hereby authorized the sum of \$150,000,000 in revenue bond funds or so much thereof as may be necessary and the same sum or so much thereof as may be necessary is appropriated for fiscal year 2001-2002 for plans, design, construction, and equipment for a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu.

SECTION 5. The board of regents of the University of Hawaii is authorized to issue revenue bonds for a university health and wellness center, including a new medical school facility in such principal amount as shall be required to yield the amount necessary to finance the cost of construction thereof, and, if so determined by the board of regents of the University of Hawaii and approved by the governor, an additional principal amount as may be deemed necessary by the board of regents of the University of Hawaii to pay interest on the authorized and issued revenue bonds during the estimated period of construction of the university health and wellness center, including a new medical school facility, for which the revenue bonds are issued, to establish, maintain, or increase reserves for the revenue bonds, and to pay the expenses of issuing such revenue bonds. The revenue bonds shall be issued pursuant to the provisions of chapter 306, Hawaii Revised Statutes. The principal and interest on board of regents of the University of Hawaii revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable from and secured by the amounts appropriated to the university revenue-undertakings fund from the Hawaii tobacco settlement special fund pursuant to section 328L-2, Hawaii Revised Statutes. The expenses incurred in issuing the board of regents of the University of Hawaii revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid by the board of regents from funds available therefor.

The proceeds of the revenue bonds authorized in this section are appropriated for fiscal year 2001-2002 for the construction of the university health and wellness center, including a new medical school facility.

Notwithstanding any law to the contrary, the university health and wellness center, including the new medical school facility, shall constitute a “university project” as defined in section 306-1, Hawaii Revised Statutes; the term “cost of construction” shall have the meaning provided that term in section 306-1, Hawaii Revised Statutes; and all moneys allotted or appropriated from the Hawaii tobacco settlement special fund to the university revenue-undertakings fund shall constitute “revenue of the university” as defined in section 306-1, Hawaii Revised Statutes. The allocation or appropriation of moneys to the university revenue-undertakings fund pursuant to section 328L-2, Hawaii Revised Statutes, shall constitute compliance with section 306-9, Hawaii Revised Statutes, or any successor thereto, and

moneys in the university revenue-undertakings fund appropriated pursuant to section 328L-2, Hawaii Revised Statutes, shall be applied solely to the payment of the principal of and interest on, and to generate required coverage, if any, for, revenue bonds issued by the board of regents to finance the construction of the university health and wellness center, including a new medical school facility. The University of Hawaii shall constitute a public undertaking, improvement, or system, and all moneys allocated or appropriated from the Hawaii tobacco settlement special fund shall constitute "revenues" for purposes of the Constitution of Hawaii.

Notwithstanding any other law to the contrary, the board of regents is authorized to pledge, dedicate, or commit all or any portion of moneys on deposit in one or more special or revolving funds of the University of Hawaii as additional security for the payment of principal of and interest on, and to generate required coverage, if any, for, such revenue bonds, and, in the event of such a pledge, dedication, or commitment, to transfer as and when necessary from such fund or funds such amount as shall be necessary to timely pay that portion of the principal of and interest on, and required coverage, if any, for, such revenue bonds.

SECTION 6. Whenever revenue bonds authorized by this Act are issued, the board of regents is authorized to apply the proceeds of such revenue bonds to the purpose for which such bonds are issued.

SECTION 7. The appropriations made for a university health and wellness center, including a new medical school facility, from the proceeds of revenue bonds or the university revenue-undertakings fund funded by the Hawaii tobacco settlement special fund authorized in this Act shall not lapse at the end of the fiscal period for which the appropriation or authorization is made; provided that all appropriations that are unencumbered as of June 30, 2004, shall lapse as of that date.

SECTION 8. There is appropriated out of private donations and other moneys held by the University of Hawaii the sum of \$150,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the construction of a university health and wellness center, including a new medical school facility to be situated on the island of Oahu.

SECTION 9. The sums authorized or appropriated by this Act shall be expended by the board of regents of the University of Hawaii for the purposes of this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2002.

(Approved November 2, 2001.)

**Note**

1. Should be underscored.

## ACT 15

H.B. NO. 17

A Bill for an Act Relating to Economic Emergency.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The September 11, 2001, terrorist attacks on the United States have severely impacted Hawaii's economy. Business experienced catastrophic revenue losses as a result of decreases in the number of visitors to Hawaii. The nation has been warned to expect the continuation of the war on terrorism as well as continued losses due to lagging consumer confidence. With the increased risk of further terrorist attacks around the world, the economic welfare of the State is further threatened.

The purpose of this Act is to confer temporarily upon the governor certain powers to provide immediate relief to facilitate continuity of business activities and services, minimize employee layoffs, and prevent endangerment of public health, safety, or welfare, during a period of economic emergency.

SECTION 2. (a) Declaration of economic emergency. The governor may issue a proclamation declaring an economic emergency for the period from September 11, 2001, to April 30, 2002, if the governor finds that, during this time period, in addition to any determination that the slowdown of business activity in the State poses an imminent or present danger to the public health, safety, or welfare, there has been a two hundred per cent statewide increase in initial claims filed for unemployment benefits, other than claims resulting from a labor dispute, when compared with initial claims filed in the corresponding week of the preceding calendar year.

(b) Upon the declaration of the economic emergency, the governor may exercise emergency powers under this Act to provide relief during the period of the economic emergency to residents of the State who, as a result of the September 11, 2001, terrorist attacks have experienced substantial monetary losses. The relief provided under this Act shall be to facilitate continuity of business activities and services, minimize employee layoffs, and prevent endangerment of public health, safety, or welfare.

(c) Upon the declaration of an economic emergency, the governor shall convene an advisory committee composed of the president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives. The governor, through the advisory committee, shall inform the legislature and the public on the exercise of emergency powers under this Act.

SECTION 3. Suspension of statutes and rules. (a) The governor may suspend, in whole or in part, any statute, rule, or order only to implement measures relating to:

- (1) Grant-in-aid programs to provide food for Hawaii's needy;
- (2) Programs to provide aid for persons exiting welfare after the maximum five years on November 30, 2001, for housing, childcare, clothing, and school supplies;
- (3) Programs of the housing and community development corporation of Hawaii that provide financial assistance to Hawaii's needy;
- (4) Establishment of a temporary health insurance program to be implemented by the department of human services;
- (5) The creation of a temporary state additional benefits program to provide extended unemployment insurance benefits;

- (6) Increasing filing thresholds for taxpayers filing withholding, general excise, use, transient accommodations, and rental motor vehicle and tour vehicle surcharge tax returns;
  - (7) Imposing the general excise tax, rather than the public service company tax, on transportation service providers;
  - (8) Implementation of an integrated marketing plan to market and promote the State of Hawaii as a visitor destination;
  - (9) Marketing the safety of and increased security at state airports;
  - (10) Strengthening security at state airports, harbors, and highways;
  - (11) Transferring funds from the Hawaii tobacco settlement fund to the emergency budget and reserve fund as authorized by the third special session of the twenty-first legislature;
  - (12) Establishment and implementation of an emergency environmental workforce to address environmental clearance and eradication services, when the governor determines that strict compliance with any statute, rule, or order would prevent, hinder, or delay the governor's efforts to facilitate continuity of business activities and services, or when written evidence is submitted by the appropriate state department or agency showing that the health or living standards of a substantial number of individuals are immediately at risk requiring relief such as welfare assistance, unemployment compensation, or health insurance.
- (b) The governor shall provide public notice prior to the effective date whenever a statute, rule, or order is suspended in the same manner required for the publication of rules under section 4.
- (c) The governor shall not suspend any provision of this Act.

**SECTION 4. Adoption of rules.** The governor may adopt rules that are required for fair, just, nondiscriminatory, and orderly administration of the emergency powers granted in section 3 of this Act to provide immediate relief during the economic emergency period; provided that reasonable classifications, exceptions, and exemptions may be made and granted to effectuate the emergency powers. Chapter 91, Hawaii Revised Statutes, shall not apply to these rules. Rules authorized by this Act shall be adopted by the governor and become effective on a specified date. Prior to the effective date, the rules shall be published pursuant to section 1-28.5, Hawaii Revised Statutes, or in lieu of publication and when immediate adoption of rules is necessary, by radio or television broadcast, on an official state website on the Internet, or such other means as may be available; provided that the rules shall be published thereafter pursuant to section 1-28.5, Hawaii Revised Statutes, at the earliest practicable date.

**SECTION 5. Existing state contracts.** (a) The governor may suspend, waive, or defer any contract obligations owed to the State up to April 30, 2002, and upon such terms and conditions as shall be necessary to minimize losses that are attributable to the economic emergency. For the purposes of this section, the term "contracts" includes leases, including agricultural leases with the department of land and natural resources or department of agriculture; land licenses; land permits; easements; concessions, including airport concessions; and subsidies and grants that have been awarded, extended, or renewed pursuant to law and rules.

(b) A person under contract with the State may be eligible for consideration for relief if the person requests such relief and satisfies the following conditions:

- (1) The person under contract with the State submits:
  - (A) Written evidence proving the amount and the extent of any losses attributable to the economic emergency; and
  - (B) An accounting of any insurance or federal benefit or assistance received or anticipated due to the economic emergency; and

- (2) The losses, at a minimum, must be at least a fifteen per cent reduction in the volume of business (including the volume of any business upon which the person under contract with the State must pay to the State rents, fees, or other amounts to the department or agency attributable to such volume of business) covered by the contract for a period of at least thirty days after September 10, 2001, computed on the average monthly gross income attributable to the business covered by the contract for the shorter of the following periods:
  - (A) The six months just prior to September 11, 2001; or
  - (B) As long as the person under contract with the State has had the contract with the State.

In computing the loss under paragraph (2), the person under contract shall appropriately increase the volume of business by any amounts reported in paragraph (1)(B). The written evidence required to be submitted to the department or agency by the person under contract with the State seeking relief under this paragraph must include at least a weekly submission of daily sales and activity data, clearly indicating sales and activity volume, the revenue received, derived, or realized from or attributable to the sales and activities, and such other sales and activity data deemed appropriate by the department or agency; and

- (3) If the person under contract with the state department of transportation is an airline or air carrier, the person may qualify for the relief described in this section if the person satisfies paragraph (1) and, in lieu of paragraph (2), the following conditions:
  - (A) The losses suffered by the airline or air carrier comprise at least a fifteen per cent reduction in the volume and number of passengers enplaned and deplaned or cargo handled, at state airports by the airline or air carrier for a period of at least thirty days, computed on the average monthly volume of passengers enplaned and deplaned or cargo handled, as appropriate, for the six months just prior to September 11, 2001;
  - (B) Each such airline and air carrier submits at least weekly to the department of transportation traffic reports on aircraft operations, including the daily flight schedules and the following for each aircraft landing and taking off from a state airport: volume and number of passengers enplaned and deplaned, volume and type of cargo handled, type of aircraft, passenger and cargo capacity, date of landing or take-off, and origin and destination.

SECTION 6. Notwithstanding section 261-7, Hawaii Revised Statutes, and section 5 of this Act, the governor may waive airport landing fees, and airport system support charges during the period of economic emergency. Each airline and air carrier receiving relief under this section shall submit at least weekly to the department of transportation traffic reports on aircraft operations, including the daily flight schedules and for each aircraft landing and taking off from a state airport, the volume and number of passengers enplaned and deplaned, volume and type of cargo handled, type of aircraft, passenger and cargo capacity, the date of landing or take-off, and origin and destination.

SECTION 7. The powers and authority conferred upon the governor by this Act are in addition to any other powers or authority conferred upon the governor by the laws of the United States and of the State for the same or like purpose, and shall not be construed as abrogating, limiting, or modifying any such power or authority.

SECTION 8. Monthly reports to the legislature. The governor shall submit a monthly report to the legislature, or if the legislature is not in session, to its presiding officers, to keep the legislature apprised of all actions taken under this Act. The monthly reports shall include detailed information, by department or agency, on each action taken under this Act, including the reasons for such action, the names of all businesses and contractors benefiting by such actions, the benefit provided by any insurance or federal agency, amounts expended, and the source of funding for each expenditure.

SECTION 9. Effect of this Act on other laws and obligations. (a) All laws inconsistent with this Act or any rule adopted under the authority of this Act, shall be suspended during the period of the economic emergency and to the extent that the suspension is necessary to effectuate the purposes of this Act.

(b) All actions taken under this Act shall comply with applicable federal laws and regulations and shall not jeopardize the receipt of any federal aid or impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or any such agency.

(c) The State and any agency thereof shall remain obligated to collect and realize sufficient revenue to meet the expenditures of the State or any agency thereof in carrying out its public duties.

SECTION 10. Upon the repeal of this Act:

- (1) Any relief granted, including any benefit or privilege resulting from any action taken by the governor under this Act, shall cease;
- (2) All statutes, rules, or orders suspended, and all contract obligations that were waived, suspended, deferred, or modified by the governor under this Act shall be reinstated in the form that existed on the day before the effective date of this Act; and
- (3) All rules adopted by the governor under this Act shall terminate.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. Section 171-13, Hawaii Revised Statutes, is amended to read as follows:

**“§171-13 Disposition of public lands.** Except as otherwise provided by law and subject to other provisions of this chapter, the board may:

- (1) Dispose of public land in fee simple, by lease, lease with option to purchase, license, or permit; and
- (2) Grant easement by direct negotiation or otherwise for particular purposes in perpetuity on such terms as may be set by the board, subject to reverter to the State upon termination or abandonment of the specific purpose for which it was granted, provided the sale price of such easement shall be determined pursuant to section 171-17(b).

No person shall be eligible to purchase or lease public lands, or to be granted a license, permit, or easement covering public lands, who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands cancelled for failure to satisfy the terms and conditions thereof[.], unless such cancellation relates to a breach or default by the person in payments to any agency of the State due to losses in volume of business or monthly

gross income suffered by the person during a period of economic emergency declared by the governor in accordance with chapter 209.”

SECTION 13.<sup>1</sup> This Act shall take effect upon its approval and shall be repealed on April 30, 2002.

(Approved November 3, 2001.)

**Note**

1. No Ramseyer clause.

**Session Laws of Hawaii  
Passed By The  
Twenty-First State Legislature  
Regular Session  
2002**

**ACT 1**

H.B. NO. 1

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Legislative Auditor, the Legislative Reference Bureau, and the Ombudsman.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,256,084 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the Senate up to and including June 30, 2003, including the 2002 regular session, Twenty-first Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2002 and 2003 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,545,077 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the House of Representatives up to and including June 30, 2003, including the 2002 regular session, Twenty-first Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2002 and 2003 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 2002 and 2003 regular sessions shall be made only with the approval of the President of the Senate, and payment of expenses of the House of Representatives during the interim between the 2002 and 2003 regular sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 15, 2003, the Senate and the House of Representatives shall each have their accounts audited and a full report of the respective audits shall be presented to the Senate and to the House of Representatives convening on January 15, 2003.

SECTION 5. The expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall not be limited by the provisions of section 78-15, Hawaii Revised Statutes, or by any other general statute. Until



## ACT 1

otherwise prescribed by law, the expenses of such member shall be \$130 a day as authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,002,219 or so much thereof as may be necessary to the office of the legislative auditor for the following expenses:

- (1) The sum of \$2,172,443 for defraying the expenses of the office of the legislative auditor during fiscal year 2002-2003;
- (2) The sum of \$679,776 for defraying the expenses of the office of the state ethics commission during fiscal year 2002-2003; and
- (3) The sum of \$150,000 during fiscal year 2002-2003 for:
  - (A) Performing special studies;
  - (B) Improving capabilities for planning, programming, and budgeting;
  - (C) Fulfilling other special requests made of the legislative auditor by the Legislature or jointly by the President of the Senate and the Speaker of the House of Representatives;
  - (D) Legislative studies and contractual services for those studies; and
  - (E) Such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,381,102 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 2002-2003, including equipment relating to computer systems programming and operations.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$755,844 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2002-2003.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the following sums or so much thereof as may be necessary for defraying the expenses of the legislative information system:

- (1) \$600,000 to the Senate; and
- (2) \$600,000 to the House of Representatives.

This appropriation shall be used to pay for hardware, software, consultant, installation, material, supply, and other related costs associated with the legislative information system that have been or will be incurred. This appropriation shall take effect upon the approval of this Act and shall not lapse until June 30, 2003.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000 or so much thereof as may be necessary for the legislative broadcast program, including the production and distribution of television broadcasts of legislative proceedings. This appropriation shall take effect upon the approval of this Act and shall be expended by the Legislature for the purposes of this section. This appropriation shall not lapse until June 30, 2003.

SECTION 11. As of the close of business on June 30, 2003, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 12. Act 1, Session Laws of Hawaii 2001, is amended by amending section 7 to read as follows:

“SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary to the office of the legislative auditor for the purpose of meeting costs and expenses related to Felix v. Cayetano consent decree studies and other activities requested by the Legislature. This appropriation shall take effect upon the approval of this Act and shall not lapse until June 30, [2002:] 2003.”

SECTION 13. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 14.<sup>1</sup> This Act shall take effect upon its approval.

(Approved January 30, 2002.)

**Note**

1. No Ramseyer clause.

**ACT 2**

S.B. NO. 2662

A Bill for an Act Relating to New Century Conversion Charter Schools.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to subpart D of part IV to be appropriately designated and to read as follows:

**“§302A- New century conversion charter schools; conversion schools.** (a) As used in this section:

“New century conversion charter school” means:

- (1) Any existing department school that is managed and operated in accordance with subsection (d); or
- (2) Any existing department school that is managed and operated by a nonprofit organization in accordance with this section, excluding subsection (d).

“Nonprofit organization” means a private, nonprofit, tax-exempt entity that:

- (1) Is recognized as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) Is domiciled in this State; and
- (3) Makes a minimum annual contribution of \$1 per pupil toward the operation of a new century conversion charter school for every \$4 per pupil allocated by the department for the operation of the charter school.

(b) A nonprofit organization may submit a letter of intent to the board of education to operate and manage an existing public school as a new century conversion charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to section 302A-1182(c); provided that:

- (1) The local school board as the governing body of the new century conversion charter school shall be composed of the board of directors of the nonprofit organization and not the participants specified in subsection (d)(1). The nonprofit organization may also appoint advi-

sory panels of community representatives for each school managed by the organization, with whom the organization may consult; provided that these panels shall not have governing authority over the school and shall serve only in an advisory capacity to the nonprofit organization;

- (2) The detailed implementation plan for each new century conversion charter school to be operated by the nonprofit organization shall be formulated, developed, and submitted by the local school board. The detailed implementation plan shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units;
- (3) After the detailed implementation plan for a new century conversion charter school operated and managed by the nonprofit organization has been approved by the new century charter school review panel and the board of education as provided in section 302A-1182(d) to (g), the board of education shall issue a charter, and the implementation plan shall be converted to a written performance contract between the nonprofit organization and the board of education, under which the new century conversion charter school shall be managed and operated as a division of the nonprofit organization;
- (4) The board of directors of the nonprofit organization, as the governing body for the new century conversion charter school that it operates and manages, shall have the same protections that are afforded to the state board of education;
- (5) Any new century conversion charter school that is managed and operated by a nonprofit organization shall be eligible for the same federal and state funding as allowed to other department schools; provided that the nonprofit organization may allocate federal and state funds among two or more of the new century conversion charter schools that it operates and manages to the extent permitted by law; and
- (6) If, at any time, the new century conversion charter school dissolves or is denied continuation, the State of Hawaii shall have first right, at no cost to the State, to all the assets and facilities of the new century conversion charter school, except as provided in the detailed implementation plan.

(c) Any nonprofit organization that seeks to manage or operate a new century conversion charter school as provided in subsection (b) shall comply with the following at the time of application:

- (1) Have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
- (2) Have experience in the management and operation of public or private schools, or, to the extent necessary, agree to obtain appropriate services from another entity or entities possessing such experience;
- (3) Comply with all applicable federal, state, and county laws, including being licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments; and
- (4) Comply with any other requirements prescribed by the department to ensure adherence with applicable federal, state, and county laws and the purposes of this chapter.

(d) As an alternative to subsection (b), any public school or schools may submit a letter of intent to the board of education to form a new century conversion

charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to section 302A-1182(c); provided that:

- (1) The local school board as its governing body shall be composed of, at a minimum, one representative from each of the following participant groups:
  - (A) Principals;
  - (B) Instructional staff members selected by the school instructional staff;
  - (C) Support staff selected by the support staff of the school;
  - (D) Parents of students attending the school selected by the parents of the school;
  - (E) Student body representatives selected by the students of the school; and
  - (F) The community at-large; and
- (2) The detailed implementation plan shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units.

(e) Up to a total of twenty-five schools may be established as new century conversion charter schools.

(f) This section does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

(g) Unless otherwise provided in this section, the provisions in this subpart, as they relate to new century charter schools, shall apply to new century conversion charter schools. In the event of a conflict between the provisions in this section, as they relate to new century conversion charter schools, and the provisions in this subpart, this section shall control."

SECTION 2. Section 302A-1182, Hawaii Revised Statutes, is amended to read as follows:

**"§302A-1182 New century charter schools; establishment.** (a) Up to a total of twenty-five schools may be established as new century charter schools. These new century charter schools may be established by:

- (1) The creation of a new school [~~pursuant to subsection (c);~~
- (2) An existing public school pursuant to subsection (b)]; or
- ~~[(3)]~~ (2) The creation of a new school, comprising programs or sections of existing public school populations and using existing public school facilities, pursuant to subsection [~~(c);~~] (b).

~~[(b) Any public school or schools may submit a letter of intent to the board to form a new century charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (d); provided that:~~

- ~~(1) The local school board as its governing body shall be composed of, at a minimum, one representative from each of the following participant groups:~~
  - ~~(A) Principals;~~
  - ~~(B) Instructional staff members selected by the school instructional staff;~~
  - ~~(C) Support staff selected by the support staff of the school;~~
  - ~~(D) Parents of students attending the school selected by the parents of the school;~~

- (E) ~~Student body representatives selected by the students of the school; and~~
- (F) ~~The community at large; and~~
- (2) ~~The detailed implementation plan shall be approved by sixty per cent of the school's existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units.~~
- (c) ~~As an alternative to subsection (b), any]~~
- (b) Any community, group of teachers, group of teachers and administrators, entity recognized as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any program within an existing school may submit a letter of intent to the board to form a new century charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to subsection [(d)]. (c).
- [(d)] (c) The local school board [shall], with the support and guidance of the superintendent, shall formulate and develop a detailed implementation plan that meets the requirements of this subsection and [øf] section 302A-1184. The plan shall include [but not be limited to] the following:
  - (1) A description of employee rights and management issues and a framework for addressing those issues that protect the rights of employees;
  - (2) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
  - (3) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
  - (4) A comprehensive plan for the assessment of student, administrative support, and teaching personnel performance, that:
    - (A) Recognizes the interests of the general public;
    - (B) Incorporates or exceeds state educational content and performance standards;
    - (C) Includes a system of faculty and staff accountability that holds faculty and staff both individually and collectively accountable for their performance, and that is at least equivalent to the average system of accountability in public schools throughout the State; and
    - (D) Provides for program audits and annual financial audits.
  - (5) The governance structure of the school;
  - (6) A plan for any necessary design, construction, renovation, and management of facilities that is consistent with the state facilities plan; provided that [if]:
    - (A) If the facilities management plan includes use of existing school facilities, the new century charter school shall receive authorization from the administrator responsible for the facilities[; ~~provided further that the~~]; and
    - (B) The final determination of use shall fall within the board's discretion.
- [(e)] (d) The detailed implementation plan shall be submitted to the new century charter school review panel, which shall be composed of seven members as follows:
  - (1) Four of the members shall be board of education members or their designees appointed by the chairperson of the board of education;
  - (2) Two of the members shall be members of the new century charter school community approved by the chairperson of the board of education from a list submitted by existing new century charter schools; and

- (3) One member shall be the superintendent of education or the superintendent's designee.

Panel review procedures shall be as provided in this section. The board may adopt rules pursuant to chapter 91 to further guide the panel's review process.

~~[(f)]~~ (e) The new century charter school review panel shall have sixty working days to review the completed implementation plan for a proposed new century charter school to ensure that it meets the requirements of subsection ~~[(d)]~~ (c) and section 302A-1184. Within forty-five working days, the panel shall issue a report of its preliminary findings to the board of education and the local school board. If the panel subsequently determines that the implementation plan:

- (1) Meets the requirements of subsection ~~[(d)]~~ (c) and section 302A-1184, the panel shall by the sixtieth working day submit a recommendation to the board of education to issue a charter to the proposed new century charter school. Upon receipt of the panel's recommendation, the board shall issue a charter, and the implementation plan shall be converted to a written performance contract between the school and the board; or
- (2) Fails to meet the requirements of subsection ~~[(d)]~~ (c) or section 302A-1184, the panel:
  - (A) Shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to resolve the conflict; and
  - (B) May submit a recommendation to the board to issue a provisional approval for a charter if the panel determines that the applicant may reasonably be expected to expeditiously resolve any remaining conflict or conflicts impeding the issuance of a charter. The provisional approval shall be effective for one year. The board may extend the provisional approval beyond a period of one year. If a charter is subsequently issued, the amended implementation plan shall be converted to a written performance contract between the school and the board.

~~[(g)]~~ (f) An amended implementation plan shall be submitted within thirty working days of notification pursuant to subsection ~~[(f)(2)(A)]~~ (e)(2)(A). The board shall deny the issuance of a charter if the local school board does not submit an amended implementation plan within the thirty working day period. The panel shall have thirty working days to review the amended implementation plan. If the amended implementation plan:

- (1) Meets the requirements of subsection ~~[(d)]~~ (c) and section 302A-1184, the panel shall by the thirtieth working day submit a recommendation to the board of education to issue a charter to the proposed new century charter school. If a charter is issued, the amended implementation plan shall be converted to a written performance contract between the school and the board; or
- (2) Fails to resolve any conflicts to the panel's satisfaction or involves new and different issues of conflict with subsection ~~[(d)]~~ (c) or section 302A-1184, the panel shall deny issuance of a charter.

~~[(h)]~~ (g) A local school board may file an appeal of the denial of an application for a charter with the panel. Upon filing an appeal, the panel shall forward the implementation plan and appropriate documentation of the appeal to the board of education. Within thirty working days, the board of education shall issue a report of its findings and final determination to the local school board. If the implementation plan is approved, the board of education shall issue a charter and the implementation plan shall be converted to a written performance contract between the school and the board of education.

[~~(i)~~] (h) The new century charter schools shall not charge tuition. The State shall afford the local school board of any new century charter school the same protections as the State affords to the board.”

## Part II

SECTION 3. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of this section, “member” means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the local school board of any new century charter school established under section 302A-1182[;] or new century conversion charter school established under section 302A- , council, authority, committee, or commission, established by law or elected to the board of education or the board of trustees of the employees’ retirement system under section 88-24; provided that “member” shall not include any person elected to serve on a board or commission in accordance with chapter 11 other than a person elected to serve on the board of education.”

SECTION 4. Section 302A-1302, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1302 School-based budget flexibility.** Beginning with the 1995-1997 fiscal biennium, the department shall implement school-based budget flexibility for schools, complexes, and learning support centers. The flexibility shall be limited to the school-based budgeting program EDN 100 of the department for all schools except new century charter schools defined in section 302A-101[;] and new century conversion charter schools defined in section 302A- ; provided that beginning in fiscal year 1998-1999, and every year thereafter, the department shall distribute the full appropriation due to a new century charter school or new century conversion charter school pursuant to [section] sections 302A-1185 and 302A- , directly to the new century charter school[;] or new century conversion charter school.”

SECTION 5. Section 302A-1505, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Prior to meeting with the department of accounting and general services to advise it of a school’s repair and maintenance needs, the school’s principal and the business and fiscal officer shall consider the recommendations made by the school/ community-based management council, if there is such a council at the school; or the local school board, if the school is a new century charter school[;] or a new century conversion charter school. If there is no school/community-based management council or local school board, then the school’s principal shall appoint a standing committee composed of a teacher, a member of the support staff, a parent, a student, and a community member.”

## Part III

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved April 4, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5

**ACT 3**

S.B. NO. 2788

A Bill for an Act Relating to Unemployment Insurance Appeals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 383-38, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The claimant or any other party entitled to notice of a determination or redetermination as herein provided may file an appeal from the determination or redetermination at the office of the department in the county in which the claimant resides or in the county in which the claimant was last employed, or with a copy of the contested determination at the employment security appeals referee’s office, within ten days after the date of mailing of the notice to the claimant’s or party’s last known address, or if the notice is not mailed, within ten days after the date of delivery of the notice to the claimant or party. The department may for good cause extend the period within which an appeal may be filed to thirty days. Written notice of a hearing of an appeal shall be sent by first class, nonregistered, noncertified mail to the claimant’s or party’s last known address.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 4, 2002.)

**ACT 4**

H.B. NO. 1726

A Bill for an Act Relating to Driver’s License Instruction Permit.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The examiner of drivers shall require proof from every applicant under the age of eighteen that the applicant has completed a driver education program and a behind-the-wheel driver training course certified by the director of transportation. The examiner of drivers shall not examine any applicant for a driver’s license who is sixteen through seventeen years of age unless the applicant holds a valid instruction permit under section 286-110, for a period of no fewer than ninety days. If the applicant’s instruction permit has expired and a new instruction permit was issued within thirty days of its expiration, the examiner of drivers may examine the applicant without requiring an additional ninety-day period.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 5, 2002.)



A Bill for an Act Relating to Hawaii Penal Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 709-906, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (5) to read:

“(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors and the person shall be sentenced as follows:

- (a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and
- (b) For a second offense [~~and any other subsequent offense~~] that occurs within one year of the [~~previous offense~~] first conviction, the person shall be termed a “repeat offender” and serve a minimum jail sentence of thirty days.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.”

2. By amending subsection (7) to read:

“(7) For a third or any subsequent offense [~~occurring~~] that occurs within two years [~~after~~] of a second [~~misdemeanor~~] or subsequent conviction, the person shall be charged with a class C felony.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 5, 2002.)

A Bill for an Act Relating to Judiciary Records.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 602-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“§602-5.5 [Disposition of judiciary] Judiciary records.** (a) Notwithstanding the provisions of any other law to the contrary, the supreme court shall determine whether, and the extent to which, the judiciary, will create, accept, retain, or store in electronic form any case, fiscal, and administrative records and convert written case, fiscal, and administrative records to electronic records.

(b) Notwithstanding the provisions of section 94-3, the supreme court shall determine the care, custody, and disposition of all judiciary case, fiscal, and administrative records. A record of dispositional activity shall be maintained stating whether a record was retained by the judiciary[.]; transferred to public archives, the Univer-

sity of Hawaii, the Hawaiian Historical Society[;]; or [other] another agency[;]; or destroyed. This record shall be kept on forms specified by the supreme court. One copy of the record shall be filed in the court where the records originated, and the original shall be filed with the administrative director of the courts or an agency designated by the director.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 5, 2002.)

## ACT 7

H.B. NO. 2308

A Bill for an Act Relating to the Courts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For each family court, the judge, or the senior judge [~~where~~] when there is more than one judge, shall appoint a chief administrative and executive officer who shall have the title of director of the family court. Under the general supervision of the senior judge or the judge, the director shall:

- (1) Prepare an annual budget for the court;
- (2) Formulate procedures governing the routine administration of court services;
- (3) Make recommendations to the court for improvement in court services;
- (4) Make recommendations to the senior judge or the judge for the appointment of administrative, supervisory, consultant, and necessary professional and clerical and other personnel to perform the duties assigned to the court and the director;
- [(5)] ~~Collect necessary statistics and prepare an annual report of the work of the court;~~
- [(6)] (5) Provide supervision and consultation to the administrative and supervisory staff regarding the administration of court services, recruitment of personnel, in-service training, and fiscal and office management; and
- [(7)] (6) Perform [~~such~~] other duties as the senior judge or the judge shall specify.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 5, 2002.)

ACT 8

H.B. NO. 2310

A Bill for an Act Relating to Venue.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 604-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Except as otherwise provided, civil actions shall be brought in the district court of the judicial circuit in which the defendant or a majority of the defendants reside or the claim for relief arose[~~—unless there are parties whose presence is required for adjudication of the claim who cannot be served in that circuit, in which case the action may be brought in the district court of any circuit in which all of the parties can be served~~]. The venue may be changed or the case transferred as provided by sections 604-7.3 and 604-7.4.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved April 5, 2002.)

ACT 9

H.B. NO. 2317

A Bill for an Act Relating to the Jurisdiction of the Courts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The court shall have concurrent jurisdiction with the district court over violations of sections 707-712, 707-717, 707-722, 708-822, 708-823, 710-1010.5, 711-1106, and 711-1106.5 when multiple offenses are charged through complaint or indictment and at least one offense is a violation of an order issued pursuant to chapter 586 or a violation of section 709-906.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 5, 2002.)

ACT 10

H.B. NO. 2318

A Bill for an Act Relating to Forfeiture of Bail or Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 804-51, Hawaii Revised Statutes, is amended to read as follows:

“**§804-51 Procedure.** Whenever the court, in any criminal cause, forfeits any bond or recognizance given in a criminal cause, the court shall immediately

enter up judgment in favor of the State and against the principal or principals and surety or sureties on the bond, jointly and severally, for the full amount of the penalty thereof, and shall cause execution to issue thereon immediately after the expiration of thirty days from the date that notice is given via personal service or certified mail, return receipt requested, to the surety or sureties on the bond, of the entry of the judgment in favor of the State, unless before the expiration of thirty days from the date that notice is given to the surety or sureties on the bond of the entry of the judgment in favor of the State, a motion or application of the principal or principals, surety or sureties, or any of them, showing good cause why execution should not issue upon the judgment, is filed with the court. If the motion or application, after a hearing held thereon, is sustained, the court shall vacate the judgment of forfeiture and, if the principal surrenders or is surrendered pursuant to section 804-14 or section 804-41, return the bond or recognizance to the principal or surety, whoever shall have given it, less the amount of any cost, as established at the hearing, incurred by the State as a result of the nonappearance of the principal or other event on the basis of which the court forfeited the bond or recognizance. If the motion or application, after a hearing held thereon, is overruled, execution shall forthwith issue and shall not be stayed unless the order overruling the motion or application is appealed from as in the case of a final judgment.

This section shall be considered to be set forth in full in words and figures in, and to form a part of, and to be included in, each and every bond or recognizance given in a criminal cause, whether actually set forth in the bond or recognizance, or not.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 5, 2002.)

## ACT 11

H.B. NO. 2437

A Bill for an Act Relating to Foreign Protective Orders.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 586-25, Hawaii Revised Statutes, is amended to read as follows:

“~~[(H)§586-25(H)]~~ **Good faith immunity.** Any law enforcement officer acting in good faith shall be immune from civil or criminal liability in any action arising in connection with enforcement of a valid foreign protective order or a foreign protective order that appears to be authentic on its face pursuant to this part.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 5, 2002.)

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 208 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

**“§208. Conditions of leases.** Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

- (1) The original lessee shall be a native Hawaiian, not less than eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quitclaimed, or canceled in accordance with the provisions of succeeding sections.
- (2) The lessee shall pay a rental of \$1 a year for the tract and the lease shall be for a term of ninety-nine years; except that the department may extend the term of any lease[;]; provided that the approval of any extension shall be subject to the condition that the aggregate of the initial ninety-nine year term and any extension granted shall not be for more than one hundred ninety-nine years.
- (3) The lessee may be required to occupy and commence to use or cultivate the tract as the lessee's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the commencement of the term of the lease.
- (4) The lessee thereafter, for at least such part of each year as the department shall prescribe by rules, shall occupy and use or cultivate the tract on the lessee's own behalf.
- (5) The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the lessee's interest in the tract; except that the lessee, with the approval of the department, also may transfer the lessee's interest in the tract to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild. A lessee who is at least one-quarter Hawaiian who has received an interest in the tract through succession or transfer may, with the approval of the department, transfer the lessee's leasehold interest to a brother or sister who is at least one-quarter Hawaiian. Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians or qualified relative who is at least one-quarter Hawaiian approved of by the department or for any indebtedness due the department or for taxes or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet the lessee's interest in the tract or improvements thereon; provided that a lessee may be permitted, with the approval of the department, to rent to a native Hawaiian or Hawaiians,

lodging either within the lessee's existing home or in a separate residential dwelling unit constructed on the premises.

- (6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans, or any acceptable private mortgage insurance as approved by the commission. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

- (7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may pay such taxes and have a lien therefor as provided by section 216 of this Act.
- (8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 5, 2002.)

#### Note

1. So in original.

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the Good Beginnings Alliance, established in response to Act 77, Session Laws of Hawaii 1997, is a public-private partnership charged with the responsibility for improving early childhood outcomes through the development of quality early childhood education and care and related family support services. Specifically, the Good Beginnings Alliance must develop policy recommendations concerning all aspects of a coordinated early childhood education and care system, including coordination strategies, resource development, and advocacy.

Through Act 77, Session Laws of Hawaii 1997, the Good Beginnings Alliance is charged with ensuring forward and strategic movement with partners — families, communities, providers, and policy makers — who share a commitment to the goal of all children in Hawaii starting school safe, healthy, and ready to succeed.

The legislature also recognizes that recent reports on the science of child development continue to emphasize that during the first five years of life it is critical for optimum growth and development that a child be in an early education and care environment that stimulates the child's curiosity and creativity, is safe and healthy, and nurtures the child's spirit. Studies have shown that young children thrive when they live in families and communities that foster their "warm heartedness", respect their dignity, and encourage their life-long learning.

Hawaii recognizes the importance of early childhood development on future learning so that children will be ready to succeed in school. Public and private agencies in partnership with communities across the State have implemented the state policy adopted in 1998 by the legislature in House Concurrent Resolution No. 38, S.D. 1, "All of Hawaii's Children Will Be Safe, Healthy and Ready to Succeed."

There is increasing national and local focus on the need for quality early childhood programs and experiences in preparing children for kindergarten. The public is becoming more aware that addressing the school readiness of young children is essential for meeting the standards that the federal government will be putting into place as part of education reform. As growing numbers of kindergarten teachers report that children are entering kindergarten not ready for success, the focus is beginning to fall on how families, communities, and early education can support a child to become ready for school, and on how the schools can become better prepared to meet the needs of each individual child entering kindergarten.

The 2001 census reports state that Hawaii has 31,751 children three and four years of age. Of those children, 14,967 are from low-income families. However, fifty-one per cent of three and four-year-old children whose families are considered "low-income" (meaning they earn less than one hundred eighty-five per cent of the Federal Poverty Index) do not receive preschool subsidies. Studies in Hawaii and around the nation have demonstrated that children from low-income families who are in quality early childhood education environments and programs prior to entry into kindergarten show greater gains in later school achievement than children who did not have these opportunities.

The recent report entitled "From Neurons to Neighborhoods", developed by a committee of seventeen national leaders in the fields of early childhood education, psychiatry, neuroscience, economics, and public policy convened by the Board on Children, Youth, and Families of the National Research Council and the Institute of Medicine, states that "striking disparities in what children know and can do are

evident well before they enter kindergarten. These differences are strongly associated with social and economic circumstances, and they are predictive of subsequent academic performance.” The report goes on to state, “children grow and thrive in the context of close and dependable relationships that provide love and nurturance, security, responsive interactions, and encouragement for exploration. These conditions most often occur when there is a positive interaction among family, school, community, and the child.” The report emphasizes the importance of ensuring that young children’s needs are met through sustained relationships with qualified caregivers, that the special needs of children with developmental disabilities or chronic health conditions are addressed, and that the settings in which children spend their time are safe, stimulating, and compatible with the values and priorities of their families.

The legislature, by codifying the definition of “school readiness”, recognizes the importance of positive interactions among family, school, community, and the child. The legislature affirms the progress of the interdepartmental council school readiness task force and the results and performance framework underway. The overriding purpose for developing a definition of readiness is to create conditions that will enable children in Hawaii to succeed in kindergarten and subsequent school experiences. In order to realize this purpose, Hawaii is following the lead of the National Education Goals Panel and national and state early childhood research and defining readiness broadly to include the critical attributes of child, school, and family and community support.

This definition of “school readiness” is one of shared responsibility and accountability. Children’s developmental characteristics and abilities vary widely in individual children and include: physical health and well being, social and emotional development, school-related behaviors and skills, approaches to learning, motor development and self-help skills, communication and language developmental skills, general knowledge, and cognitive development.

Family support includes meeting children’s basic needs, providing emotional support, supporting learning by providing stimulating experiences, talking to children, and reading to them every day.

School support includes welcoming children and families, involving families in school, providing transitions between the home or early education program and the school, providing active, hands-on learning experiences, supporting quality instructional methods, building relationships between children and teachers, honoring individual and cultural diversity, and partnering with community agencies.

Community support includes provisions for children to have adequate nutrition, opportunity for physical activity, health care, enriching preschool and home experiences, and programs that help families to be their child’s first teacher.

The purpose of the Act is to add the definition of “school readiness” to Act 77, Session Laws of Hawaii 1997. The inclusion of the definition of “school readiness” is in keeping with the intent of Act 77, which recognizes the Good Beginnings Alliance as the focal point for policy development, and is dedicated to enhancing, developing, and coordinating quality early childhood services.

The school readiness task force of the interdepartmental council, the private nonprofit corporation, and the community councils are committed to improving the school readiness of Hawaii’s children and joining with families, schools, and communities to further support children’s readiness for school and school’s readiness for children. This Act requires the foregoing partners to present to the legislature an annual report of progress in enlisting public and community support and family participation in school readiness and in developing policies and strategies for measuring results and performance indicators of school readiness that will strengthen Hawaii’s early childhood system and build capacity for sustainability.



## ACT 14

SECTION 2. Act 77, Session Laws of Hawaii 1997, section 2, as amended by Act 60, Session Laws of Hawaii 2000, is amended by adding a new section to read as follows:

“§ -6 **School readiness; progress report.** (a) “School readiness” means that young children are ready to have successful learning experiences in school when there is a positive interaction among the child’s developmental characteristics, school practices, and family and community support.

(b) The corporation designated in section -1 and the interdepartmental council shall jointly submit, in their annual report to the governor and the legislature, a description of the progress achieved in enlisting public, private, and community support and family participation in school readiness and in developing policies and strategies for measuring results and performance indicators of school readiness that will strengthen Hawaii’s early childhood system and build capacity for sustainability.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 8, 2002.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 14

S.B. NO. 2725

A Bill for an Act Relating to Naturopathy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 455-2, Hawaii Revised Statutes, is amended to read as follows:

**“§455-2 [Application for examination; fee.] Licensing application and requirements; fees.** (a) Any person desiring to practice naturopathy shall [apply in writing to the board upon a form prepared and furnished] be licensed under this chapter. To obtain a license under this chapter, a person shall submit a completed application prescribed by the board [and shall include in the application any facts concerning the applicant as the board shall require. At the time of the application each applicant shall pay an examination fee to the department. The examination fee may be paid directly to the testing agency by the department or the examinee. The examination fee shall not be refunded if the applicant fails to pass the examination.

No person shall be licensed to practice naturopathy unless the person has been duly examined and has passed the examination.], provide the information required under this chapter, rules of the board, and other applicable laws and rules, and pay a nonrefundable application fee and other fees provided in rules adopted by the director in accordance with chapter 91.

(b) To qualify for licensure, an applicant shall have met the education, examination, and other requirements prescribed by this chapter, the rules of the board, and other applicable laws and rules.”

SECTION 2. Section 455-3, Hawaii Revised Statutes, is amended to read as follows:

**“§455-3 [Qualifications of applicants.] Education requirements.** Each applicant shall be a graduate of a school, university, or college of naturopathy that has received candidacy status with, or has been accredited by, a regional or a national [professional] accrediting body recognized by the United States Department of Education; provided that any applicant who graduated from a college of naturopathy prior to 1987 shall be deemed qualified if the college was approved by the board prior to 1987 and has been accredited by a regional or national [professional] accrediting body recognized by the United States Department of Education.”

SECTION 3. Section 455-7, Hawaii Revised Statutes, is amended to read as follows:

**“§455-7 [Examinations.] Examination requirements.** (a) The board shall [conduct examinations not less than twice in each year on subjects as the board may require. If the applicant receives a converted score of seventy-five on each part of] specify the examination[, the applicant shall be considered as<sup>1</sup> having passed the examination.] for licensure in its rules.

(b) The board shall contract with a professional testing agency to prepare, administer, and grade [examinations] each part of the examination for licensure. Each applicant shall pass [a written] the examination that has been developed, validated, and tested for reliability by a professional testing agency selected by the board [that is able to demonstrate the validity and reliability of the examination]. The board shall provide in its rules the passing scores for [any examination given or approved by the board.] each part of the examination.

(c) To be eligible to take the examination for licensure, an applicant shall have met the education requirements specified in section 455-3.

(d) An applicant may apply to take the examination for licensure and pay any required examination fees directly to the professional testing agency.

(e) The board shall set forth the requirements and limitations for reexamination, if any, in its rules.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 11, 2002.)

**Note**

1. Prior to amendment “as” appeared here.

**ACT 15**

H.B. NO. 1542

A Bill for an Act Relating to Voter Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Voting is a fundamental right for persons with disabilities as protected by the Federal Voting Rights Act of 1965, as amended, by the Voting Accessibility for the Elderly and Handicapped Act of 1984, and by the Americans with Disabilities Act. Section 11-23, Hawaii Revised Statutes, regarding elections is a violation of federal law and a violation of the civil rights of people with mental retardation. The legislature finds that the law must be changed to recognize the rights and dignity of people with retardation.

SECTION 2. Section 11-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever the clerk receives from the department of health or any informing agency, information of the death, loss of voting rights of a person sentenced for a felony as provided in section 831-2, adjudication as an incapacitated person under the provisions of chapter 560, ~~[a mentally retarded person under the provisions of chapter 333,]~~ loss of citizenship, or any other disqualification to vote, of any person registered to vote in that county, or who the clerk has reason to believe may be registered to vote therein, the clerk shall thereupon make such investigation as may be necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation the clerk finds that the person is dead, or incapacitated to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting, or has lost voting rights pursuant to section 831-2, or has lost citizenship, or is disqualified for any other reason to vote, the clerk shall remove the name of the person from the register.”

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 12, 2002.)

**ACT 16****H.B. NO. 2613**

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 11-1.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The chief election officer shall serve for a term of four years. The term shall begin on February 1 following the appointment~~[], except that the term for the first appointed chief election officer shall commence ninety days following the date of appointment, or on February 1, 1996, whichever comes first, and shall end on January 31, 1999].~~”

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is

required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, and the special handling fund, section 415-128, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, ~~[the insurance examiners' revolving fund, section 431:2-307, the motor vehicle insurance administration revolving fund, section 431:10C-115.5,]~~ and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section ~~[444-29, and the public broadcasting revolving fund, section 314-13.]~~ 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department with the exception of costs related to the Hawaii public broadcasting authority. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
  - (2) Any person subject to chapter 485 has complied with that chapter;
  - (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
  - (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
  - (5) Any person subject to chapter 467B has complied with that chapter;
- and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses.”

SECTION 3. Section 26-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources, except for matters relating to the state water code where the commission on water resource management shall have exclusive jurisdiction and final authority.

The board shall consist of [six] seven members, one from each land district and [two] three at large. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. The governor shall appoint the chairperson of the board from among the members thereof.

The board may delegate to the chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The chairperson of the board shall serve in a full-time capacity. The chairperson, in that capacity, shall perform those duties, and exercise those powers and authority, or so much thereof, as may be delegated by the board.”

SECTION 4. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs’ special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;

- (22) Integrated tax information management systems special fund under section 231-3.2;
  - (23) Insurance regulation fund under section 431:2-215;
  - (24) Hawaii tobacco settlement special fund under section 328L-2;
  - (25) Emergency and budget [~~and~~] reserve fund under section 328L-3;
  - (26) Probation services special fund under section 706-649;
  - (27) High technology special fund under section 206M-15.5;
  - (28) Public schools special fees and charges fund under section 302A-1130(f);
  - (29) Cigarette tax stamp enforcement special fund established by section 28-14;
  - (30) Cigarette tax stamp administrative special fund established by section 245-41.5; and
  - (31) Tobacco enforcement special fund established by section 28-15;
- shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 5. Section 134-16, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not apply to law enforcement officers of county police and sheriff departments of this State, or vendors providing electric guns to those entities; provided that electric guns shall at all times remain in the custody and control of the county [{]police[{]}] or sheriff departments.”

SECTION 6. Section 171-31.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The requirement of public notice and public auction pursuant to subsections (c) and (d) shall not apply when the value of the [~~property~~] abandoned or seized property is less than \$1,000. In that event, the property may be sold by negotiation, disposed of or sold as junk, kept by the department, or donated to any other government agency or a charitable organization.”

SECTION 7. Section 205A-64, Hawaii Revised Statutes, is amended to read as follows:

“**[{]§205A-64[{]} Public participation.** The lead agency and the [{]public advisory body[{]}] shall involve citizens and interested groups and organizations in the updating and implementation of the plan.”

SECTION 8. Chapter 219, Hawaii Revised Statutes, is amended as follows:  
1. By amending subsection (a) of section 219-5, Hawaii Revised Statutes, to read:

“(a) The department shall have the necessary powers to carry out the purposes of this chapter, including the following:

- (1) Prescribe the qualifications for eligibility of applicants for loans;

- (2) Establish preferences and priorities in determining eligibility for loans and loan repayment requirements;
  - (3) Establish the conditions, consistent with the purpose of this chapter, for the granting or for the continuance of a grant of a loan;
  - (4) Provide for inspection at reasonable hours of the plant facilities, books, and records of an enterprise that has applied for or has been granted a loan and require the submission of progress and final reports;
  - (5) Make loans for aquacultural products development, such as financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials or for the supplying of working capital, consistent with section 219-6;
  - (6) Secure loans by duly recorded first mortgages upon the following property within the State:
    - (A) Fee simple farm land;
    - (B) Leaseholds of farm land where the lease has an unexpired term at least two years longer than the term of the loan;
    - (C) Aquaculture products;
    - (D) Other chattels;
    - (E) A second mortgage when any prior mortgage does not contain provisions that might jeopardize the security position of the department or the borrower's ability to repay; and
    - (F) Written agreements, such as assignments of income;
  - (7) Administer the Hawaii aquaculture loan revolving fund and deposit into the fund all moneys received on account of principal;
  - (8) Include in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this chapter;
  - (9) Insure loans made to qualified [§]aquaculturists[§] by private lenders under sections 219-7 and 219-8; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on these loans exceed \$1,000,000;
  - (10) Participate in loans made to qualified [§]aquaculturists[§] by private lenders under section 219-8;
  - (11) Make direct loans to qualified [§]aquaculturists[§] as provided under section 219-9;
  - (12) Establish interest rates chargeable by the State for direct loans and by private lenders for insured and participation loans; and
  - (13) Maintain a proper reserve in the aquaculture loan revolving fund to guarantee payment of loans insured under sections 219-7 and 219-8."
2. By amending section 219-6, Hawaii Revised Statutes, to read:

**"§219-6 Loan; limitation and terms.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A", "B", "C", and "D" in paragraph (1), (2), (3), and (4) following and shall be made only to applicants who meet the eligibility requirements specified therein:

- (1) Class A: Aquaculture farm ownership and improvement loans. To provide for:
  - (A) The purchase or improvement of aquaculture farm land and waters;
  - (B) The purchase, construction, or improvement of adequate aquaculture farm dwellings, and other essential aquaculture farm facilities; and
  - (C) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$400,000 and for a term not to exceed forty years. To be eligible the applicant shall:

- (i) Derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to aquaculture farming operations; and
  - (ii) Have or be able to obtain the operating capital, including fishstock and equipment, needed to successfully operate the applicant's aquaculture farm;
- (2) Class B: Aquaculture operating loans. To carry on and improve an aquaculture operation, including:
- (A) The purchase of aquaculture equipment and fishstock;
  - (B) The payment of production and marketing expenses including materials, labor, and services;
  - (C) The payment of living expenses; and
  - (D) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$400,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive or present an acceptable plan to derive a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to aquaculture operations;

- (3) Class C: Aquaculture cooperative and corporation loans. To provide credit to [{}aquaculturists'{}] cooperative associations and corporations engaged in marketing, purchasing, and processing, and providing farm business services, including:
- (A) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$500,000 and a term not to exceed twenty years; and
  - (B) Operating loans to finance inventories of supplies, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$300,000 and a term not to exceed seven years.

To be eligible, a cooperative or corporation shall have at least seventy-five per cent of its board of directors and seventy-five per cent of its membership as shareholders who meet the eligibility requirements prescribed by the board and who devote most of their time to aquaculture operations; and

- (4) Class D: Emergency loans. To provide relief and rehabilitation to qualified [{}aquaculturists{}] without limit as to purpose:
- (A) In areas stricken by extraordinary rainstorms, windstorms, droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophes;
  - (B) On farms stricken by aquatic diseases;
  - (C) On farms seriously affected by prolonged shipping and dock strikes;
  - (D) During economic emergencies such as those caused by overproduction and excessive imports; and
  - (E) During other emergencies as determined by the board.

The maximum amounts and period for the loans shall be determined by the board; provided that the board shall require that any settlement or moneys received by qualified [{}aquaculturists{}] as a result of an



emergency declared under this section shall first be applied to the repayment of an emergency loan made under this chapter.”

SECTION 9. Section 235-102.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be deposited into the ~~[the]~~ school-level minor repairs and maintenance special fund~~]~~ established by section 302A-1504.5, when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax return form to allow the designation of contributions to the special fund on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.”

SECTION 10. Section 264-101, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the purposes of this section, “highway” means the entire width, including the ~~beam-and~~ berm or shoulder of a public highway as defined in section 264-1.”

SECTION 11. Section 266-19.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) For the purposes of this ~~[section]~~:

“Capital advancement ~~[contract]~~” means an agreement between the department of transportation and a private party whereby the private party agrees to furnish capital, labor, or materials for a public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State and in return for which the private party may be reimbursed in a manner to be determined by the department.

“Total value” includes any contract extension, project redesign, add-ons, or any other occurrence, act, or material cost that may increase the cost of the contracted project.”

SECTION 12. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Class 2. Restaurant licenses.

(1) A license under this class shall authorize the licensee to sell liquors specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering; provided further that the catering activity shall be directly related to the licensee’s operation as a restaurant. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:

~~[(4)]~~ (A) A standard bar; or

~~[(2)]~~ (B) A premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

- (2) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (3) For each category of class 2 licenses there shall be the following kinds:
  - ~~[(4)]~~ (A) General (includes all liquors except alcohol);
  - ~~[(2)]~~ (B) Beer and wine; and
  - ~~[(3)]~~ (C) Beer.

Any licensee holding a different class of license on June 19, 1990, and who would otherwise come within this class of license shall not be required to apply for a new license."

SECTION 13. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

**"§286-104 What persons shall not be licensed.** The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of operating a vehicle under the influence of an intoxicant or, prior to ~~[(January 1, 2002)]~~, of driving under the influence of alcohol or drugs;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
- (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;
- (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways;
- (5) To any person who is under eighteen years of age; provided that a person who is fifteen years and six months of age may be granted an instruction permit; and provided further that a person who is sixteen to seventeen years of age may be granted a license upon satisfying the requirements of sections 286-108 and 286-109, which license shall be valid for four years and may be suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the license, the person shall not be eligible to operate a motor vehicle on the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109; or
- (6) To any person who is not in compliance with section 286-102.5.

Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129."

SECTION 14. Section 291-1, Hawaii Revised Statutes, is amended by amending the definition of "public street, road, or highway" to read as follows:

"“Public street, road, or highway” includes the entire width, including ~~{beam and}~~ berm or shoulder, of every road, alley, street, way, lane, trail, highway, bikeway, bridge, when any part thereof is open for use by the public, including any bicycle lane, bicycle path, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1, and any public highway, as defined in section 264-1.”

SECTION 15. Section 291-51, Hawaii Revised Statutes, is amended by amending the definition of “sign designating the parking space as reserved for persons with disabilities” to read as follows:

““Sign designating the parking [{}space{}] as reserved for persons with disabilities” means a sign which contains:

- (1) The words, “Reserved Parking”;
- (2) The international symbol of access;
- (3) Words indicating that the space is reserved for parking by persons with disabilities who have valid placards or special license plates; and
- (4) The maximum fine for parking illegally in the space.”

SECTION 16. Section 302A-101, Hawaii Revised Statutes, is amended by amending the definition of “new century charter schools” to read as follows:

““New century charter schools” means the implementation of alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management, formed under section 302A-1182 [~~or 302A-1183~~].”

SECTION 17. Section 302A-410, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term “certification” read “licensing” [~~or “credentialing”~~], as the [~~latter terms are~~] term is used in part III, subpart D, and as circumstances require.”

SECTION 18. Section 302A-802, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-802 Licensing [~~and credentialing~~] standards.** (a) The board shall establish licensing [~~and credentialing~~] standards that govern teacher licensing [~~and credentialing~~] in Hawaii. Licensing [~~and credentialing~~] standards established by the board shall be adopted as rules under chapter 91 unless otherwise specified in this subpart.

(b) In the development of its standards, the board shall consider the existing *teacher applicant* pool that is available in the State and the level of the qualification of these applicants, as well as the nature and availability of existing preservice higher education teacher training programs. The board shall also consider alternative routes to licensing, such as national teacher examinations[~~, and credentials~~] that certify competency in subject areas or programs taught in the public schools.”

SECTION 19. Section 302A-803, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-803 Powers and duties of the board.** In addition to establishing standards for the issuance and renewal of licenses [~~and credentials~~] and any other powers and duties authorized by law, the board’s powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, repealing, or suspending the policies, standards, or rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations, and state and federal funds;
- (4) Submitting an annual report to the governor and the legislature on the board’s operations and from the 2007-2008 school year, submitting a summary report every five years of the board’s accomplishment of

- objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
  - (6) Establishing licensing [~~and credentialing~~] fees in accordance with chapter 91, including the collection of fees by means of mandatory payroll deductions, which shall subsequently be deposited into the state treasury and credited to the Hawaii teacher standards board revolving fund;
  - (7) Establishing penalties in accordance with chapter 91;
  - (8) Granting extensions of credentials on a case-by-case basis pursuant to section 302A-805; provided that this paragraph shall be repealed on June 30, 2002;
  - (9) Issuing, renewing, revoking, suspending, and reinstating licenses [~~and credentials~~];
  - (10) Reviewing reports from the department concerning the number of individuals hired on an emergency basis;
  - (11) Applying licensing [~~and credentialing~~] standards on a case-by-case basis and conducting licensing [~~and credentialing~~] evaluations;
  - (12) Preparing and disseminating teacher licensing information to schools and operational personnel;
  - (13) Approving teacher preparation programs;
  - (14) Administering reciprocity agreements with other states relative to licensing;
  - (15) Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;
  - (16) Participating in efforts relating to teacher quality issues, conducting professional development related to the board's standards, and promotion of high teacher standards and accomplished teaching; and
  - (17) Adopting applicable rules and procedures."

SECTION 20. Section 302A-807, Hawaii Revised Statutes, is amended to read as follows:

**"§302A-807 Refusal, suspension, revocation, and reinstatement of licenses [~~and credentials~~].** (a) The board shall serve as the final adjudicator for appeals relating to licensing [~~and credentialing~~], including the issuance or nonissuance of licenses [~~and credentials~~], and the suspension, nonrenewal, and revocation of licenses [~~and credentials~~].

(b) The board shall establish procedures for the conduct of proceedings for the consideration of requests filed with the board. In every case to revoke or suspend a license [~~or credential~~], the board shall give the person concerned written notice that a request has been filed with the board. The board shall conduct a hearing in conformity with chapter 91, and shall provide for confidentiality of the proceedings to protect the parties. In all proceedings before it, the board may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the board or to any subpoena issued by the board, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license [~~or credential~~], or any licensee [~~or credential holder~~] whose license [~~or credential~~] has been suspended or

revoked, shall have the right to appeal the board's decision to the circuit court of the circuit in which the applicant[, or licensee[, or ~~credential holder~~] resides in the manner provided in chapter 91; provided that out-of-state resident applicants shall file their appeals in the first circuit court.

(d) Upon revocation of a license [~~or credential~~], the board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the license [~~or credential~~]:

- (1) To the department; and
- (2) For the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had licenses [~~or credentials~~] revoked."

SECTION 21. Section 302A-1187, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~302A-1187[)] New century charter schools; administrative supervision.** Whenever any new century charter school is established under section 302A-1182 [~~or 302A-1183~~], the following provisions shall apply except as otherwise specifically provided by this chapter:

- (1) Following consultation with the new century charter school, the board shall represent the new century charter school in communications with the governor and with the legislature;
- (2) The financial requirements for state funds of the new century charter school shall be submitted through the board and included in the budget for the department;
- (3) The approval of all policies and rules adopted by the new century charter school shall be preceded by an open public meeting and shall not be subject to chapter 91;
- (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the new century charter school shall be determined by the new century charter school and applicable personnel laws and collective bargaining agreements;
- (5) Except as set forth in this section, the board or the superintendent of education shall not have the power to supervise or control the new century charter school in the exercise of its functions, duties, and powers; and
- (6) Local school boards may enter into an annual business contract for centralized services to be provided by the department prior to the beginning of each school year."

SECTION 22. Section 302A-1504, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department shall establish two school-level minor repairs and maintenance accounts for the use of each public school, which shall not exceed \$25,000 each per school. The first account shall be comprised of general funds appropriated to the department and the second account shall be comprised of funds appropriated out of the [~~school-level minor repairs and maintenance special fund~~] pursuant to section 302A-1504.5 for school-level minor repairs and maintenance and shall not be used for any other purpose, nor shall any other funds be deposited into the accounts. The department shall allocate funds based on the number of students at the school multiplied by a factor which recognizes the age and condition of the school."

SECTION 23. Section 302A-1504.5, Hawaii Revised Statutes, is amended to read as follows:

**“[§302A-1504.5 School-level minor repairs and maintenance special fund.]** There is established within the state treasury a special fund to be known as the [school-level minor repairs and maintenance special fund], into which shall be deposited all moneys collected pursuant to section 235-102.5(b), and any other moneys received by the department in the form of grants and donations for school-level minor repairs and maintenance. The special fund shall be administered by the department and used to fund school-level minor repairs and maintenance.”

SECTION 24. Section 328L-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury the emergency ~~and~~ budget [and] reserve fund which shall be a special fund administered by the director of finance, into which shall be deposited:

- (1) [~~Forty~~] Twenty-four and one-half per cent of the moneys received from the tobacco settlement moneys under section 328L-2(b)(1);
- (2) Appropriations made by the legislature to the fund.”

SECTION 25. Section 651-1, Hawaii Revised Statutes, is amended to read as follows:

**“§651-1 General provisions.** This part shall apply to circuit and district courts. A judge of any court of record may make any order at chambers which may be by the provisions of this part be made by the court in term time. When the proceedings are before a district judge, the judge shall be regarded as the clerk of the court for all purposes contemplated herein. The phrase “police officer,” as used in this part, means [~~a licensed process server, or~~] the director of public safety or the director’s duly authorized representative, [and] any chief of police or subordinate police officer[-], or a person authorized by the rules of court. Nothing in this part shall be construed to permit a district judge to issue a writ of attachment to be served out of the circuit in which the judge’s court is situated, or to permit an attachment of real estate, or any interest therein, under a writ issued by a district court judge.”

SECTION 26. Section 654-2, Hawaii Revised Statutes, is amended to read as follows:

**“§654-2 Bond.** When the plaintiff desires the immediate delivery of the property, the plaintiff shall execute a bond to the defendant in possession of the property, and to all persons having an interest in the property, of such amount and with such sureties as are approved by the court, conditioned that the plaintiff will prosecute the plaintiff’s action to judgment without delay, and deliver the property to the defendant in possession or any other person, if such delivery is adjudged, and pay all costs and damages that may be adjudged against the plaintiff. Upon the filing of the verified complaint or affidavit with the bond and a motion for immediate consideration of the matter, the court shall forthwith inquire into the matter, ex parte or otherwise, as in its discretion it determines. If thereupon the court finds that a prima facie claim for relief has been established, it shall issue an order directed to the sheriff, or the sheriff’s deputy, or the chief of police, or an authorized police officer of any county, or a [~~licensed process server,~~] person authorized by the rules of court, to take the property therein described and deliver the same to the plaintiff.

Copies of the verified [complaint] or affidavit, and, if a bond for immediate seizure has been filed, of the bond, and, if an order for the taking has been issued

on an ex parte hearing, of the order, shall forthwith be served upon the defendant in possession and each person having or claiming a possessory interest in the property, in the same manner as is provided for service of summons unless the party to be served has appeared in the action, in which case service may be made in the same manner as is provided for service of papers other than the summons. In a proper case, either before or after issuance of an order for the taking, the required service may be combined with the publication of the summons, in which event the giving of notice of the substance of the proceeding shall be sufficient.

Upon the application of any party, the proceeding shall be advanced and assigned for hearing at the earliest possible date.”

SECTION 27. Section 658A-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A party to an agreement to arbitrate or arbitration proceeding shall not waive, or the parties shall not vary the effect of, the requirements of this section or section 658A-3(a) or (c), 658A-7, 658A-14, 658A-18, 658A-20(d) or (e), 658A-22, 658A-23, 658A-24, 658A-25(a) or (b), or 658A-29[-], 658A-30, 658A-31, or 658A-32].”

SECTION 28. Act 29, Session Laws of Hawaii 2001, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on April 1, 2002[-]; provided that amendments made to section 346-59 by this Act shall not be repealed when that section is reenacted on June 30, 2004, pursuant to section 9 of Act 226, Session Laws of Hawaii 2000.”

SECTION 29. Act 229, Session Laws of Hawaii 2001, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon approval and shall be repealed on January 1, 2003[-]; provided that sections 467E-1 and 467E-13, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act.”

SECTION 30. Act 265, Session Laws of Hawaii 2001, is amended by amending section 4 to read as follows:

“SECTION 4. Sections 92-17(f), 171-6(9), 171-17[(e) and (d)], 182-3(b), 421H-6(a), 431:10C-213(c), 431:10C-213.5(d), 481I-4(f), 514A-121(a), 514A-127(e), 516-26, 516-66, 516-70(b), and 712A-16(1)(b)(iii), Hawaii Revised Statutes, are amended by substituting the designation of the new chapter added to the Hawaii Revised Statutes by section 1 of this Act wherever references to “chapter 658” appear, as the context requires.”

SECTION 31. Act 265, Session Laws of Hawaii 2001, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect on July 1, 2002[-]; provided that amendments made to section 712A-16(1)(b)(iii) by this Act shall not be repealed when that section is reenacted on June 30, 2006, pursuant to section 20 of Act 249, Session Laws of Hawaii 2000.”

SECTION 32. Act 312, Session Laws of Hawaii 2001, is amended by amending section 13 to read as follows:

“SECTION 13. Effective July 1, 2002, all references to “credential”, “credentials” or “credentialing” in sections 302A-410, ~~[302A-610,]~~ 302A-802,

302A-803, and 302A-807, and the phrase “teacher’s or” in section 302A-616(a)(4) shall be deleted.”

SECTION 33. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 34. This Act shall take effect upon its approval; provided that:

- (1) The amendments made to section 36-27 by section 4 of this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998;
- (2) Sections 10, 13, and 14 shall take effect retroactive to January 1, 2002;
- (3) Sections 17, 18, 19, 20, and 24 shall take effect on July 1, 2002;
- (4) Section 28 shall take effect retroactive to April 1, 2002;
- (5) Section 29 shall take effect retroactive to June 13, 2001;
- (6) Sections 30 and 31 shall take effect on July 1, 2002; and
- (7) Section 32 shall take effect retroactive to July 1, 2001.

(Approved April 12, 2002.)

## ACT 17

S.B. NO. 2341

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-86, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The association of apartment owners shall purchase and at all times maintain insurance which covers the common elements and, whether or not part of the common elements, all exterior and interior walls, floors, and ceilings, in accordance with the as-built condominium plans and specifications, against loss or damage by fire sufficient to provide for the repair or replacement thereof in the event of such loss or damages. Flood insurance shall also be ~~[provided under the federal Flood Disaster Protection Act if the property is located in an identified flood hazard area as designated by the federal Department of Housing and Urban Development.]~~ maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration. Exterior glass may be insured at the option of the association of apartment owners. The insurance coverage shall be written on the property in the name of the association of apartment owners. Premiums shall be common expenses. Provision for the insurance shall be without prejudice to the right of each apartment owner to insure the owner’s own apartment for the owner’s benefit.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 12, 2002.)



A Bill for an Act Relating to Measurement Standards.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. “Acacia koa” is a species of tree that is endemic to the Hawaiian islands and is of significant value because of its limited supply and inherent qualities. The scientific name for the species Acacia koa derives, in part, from the word “koa” which was used by ancient Hawaiians to refer to the Acacia koa tree. Acacia koa is not grown in commercially significant quantities outside of the State of Hawaii.

The majority of Acacia koa growing in the State is found on state land and is a significant public asset both commercially and culturally.

In recent years, certain vendors of wood and wood products have used the term “koa” to refer to species of wood other than Acacia koa. These species are grown outside of the State and, although sometimes similar in appearance to Acacia koa, they are not Acacia koa and have not been called or known as koa. As a result, purchasers of these imported woods may be confused or misled. Furthermore, the market value of publicly owned Acacia koa will likely be adversely affected by the incorrect representation.

The legislature finds that it is appropriate and necessary to protect the value of the public’s asset and to protect consumers from potentially misleading and deceptive advertising that misrepresents the Acacia koa content of an item.

SECTION 2. Chapter 486, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§486- Acacia koa wood; representing content.** In addition to all other label and branding requirements, no person shall offer, display, expose for sale, or solicit for the sale of any timber, lumber, wood, or wood product described or labeled using the term “koa”, either alone or in conjunction with other words unless the item is Acacia koa. Nothing in this section shall prevent the use of the term “koa” to describe wood products which are in part made of Acacia koa and, in part, other materials provided that the extent to which Acacia koa is utilized in the wood product is not misrepresented.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 12, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Medical Support for Children.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 576E-17, Hawaii Revised Statutes, is amended to read as follows:

**“§576E-17 Medical support enforcement.** (a) Where the responsible parent is ordered to provide medical insurance coverage for the dependent child, the standard notice for such medical support prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency, shall be issued. The agency shall forward a copy of the ~~[support order,] notice,~~ by registered or certified mail or by personal service, to the responsible parent’s employer or union when the responsible parent fails to provide written proof to the agency, within thirty days of receipt of the order, that the insurance has been obtained or that application for insurance coverage has been made~~[-]~~ or within two business days after the date of entry of a responsible parent in a Title IV-D case in the state directory of new hires, whichever shall first occur.

(b) Upon receipt of the copy of ~~[the order,] notice,~~ or upon request of the responsible parent pursuant to the order, the employer or union shall enroll the dependent child as a beneficiary in the group medical insurance plan and withhold any required premium from the responsible parent’s income. If more than one plan is offered by the employer or union, the child shall be enrolled in the plan in which the responsible parent is enrolled or the least costly plan otherwise available to the responsible parent that is comparable to the plan in which the responsible parent is enrolled.

(c) A dependent child whom a responsible parent is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the responsible parent until the duty of support expires or until further court or administrative order. The insurance coverage shall not be terminated prior to entry of such an order relieving the responsible parent of the duty to provide insurance coverage.

(d) The signature of the custodial parent of the insured dependent child is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of medical services. When an order for dependent insurance coverage is in effect and the responsible parent’s employment is terminated, or the insurance coverage is terminated, the insurer shall notify the agency within ten days of the termination date with notice of conversion privileges, if any.

(e) Notwithstanding any other law to the contrary, when an order for insurance coverage is in effect, the responsible parent’s employer or union shall release to the agency, upon request, information on the dependent coverage available to the responsible parent, including the name of the insurer. The employer or union shall also provide any other information and perform all tasks as required by the notice issued pursuant to this section.

(f) Any responsible parent who fails to comply with an order requiring the maintenance of insurance coverage for the dependent child shall be liable for any medical expenses incurred by the obligee or the State after the effective date of the order.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 12, 2002.)

A Bill for an Act Relating to the Uniform Professional and Vocational Licensing Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 436B-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Unless otherwise stated in this chapter, ~~[the provisions of]~~ chapters 26, 26H, 91, and 92 and the licensing laws or rules for the respective profession or vocation shall prevail. ~~[The provisions of this]~~ This chapter shall apply whenever ~~[the provisions of]~~ chapters 26, 26H, 91, and 92 and the licensing laws or rules for the respective profession or vocation are silent.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 12, 2002.)

A Bill for an Act Relating to Escrow Depositories.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 449-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A solvent escrow depository whose capital is not impaired and that has not received a notice of charges and proposed suspension or revocation order pursuant to section 449-17 may cease its business and surrender its license in the following manner:

- (1) The board of directors shall adopt a resolution approving a plan to cease activity for which a license to operate as an escrow depository is required. If applicable, the plan shall include provisions for the sale, exchange, or disposition of all outstanding escrow accounts or other business for which an escrow depository license is required by this chapter;
- (2) The escrow depository shall:
  - (A) Notify in writing all buyers and sellers whose accounts still contain outstanding balances of the termination of the escrow depository’s operations and the specific arrangements to handle the particular transaction; and
  - (B) ~~[Provide information concerning]~~ Submit to the commissioner, in writing, the name, address, and telephone number of a contact person ~~[for the purpose of]~~ who shall be responsible for answering questions and providing documents on closed accounts. This individual or the successor thereof shall continue to perform this task, and shall notify the commissioner of any changes in the information concerning the contact person, until the applicable statutes of limitations have lapsed;

- (3) The escrow depository shall file an application with the commissioner in the prescribed form for approval to cease activity for which a license to operate as an escrow depository is required. The application shall be accompanied by:
  - (A) A copy of the plan to cease activity for which a license to operate as an escrow depository is required, certified by two executive officers of the escrow depository as having been duly adopted by the board;
  - (B) Any application that may be required pursuant to section 449-8.6, if applicable;
  - (C) A copy of the notice sent by the escrow depository to all buyers and sellers whose accounts still contain outstanding balances~~;~~ and a copy of the notice providing information concerning a contact person for the purpose of answering questions and providing documents on closed accounts~~]; and~~; and
  - (D) Any other information that the commissioner may require;
- (4) The commissioner may require that an audit report, prepared by a certified public accountant at the expense of the escrow depository, be submitted showing the final accounting of the company's operations, should circumstances so warrant;
- (5) The commissioner shall approve the application to cease activity for which a license to operate as an escrow depository is required if:
  - (A) The commissioner is satisfied with the plan;
  - (B) The conditions for approval contained in section 449-8.6 have been met, if applicable; and
  - (C) No other reason exists to deny the application; provided that the commissioner may impose any restrictions and conditions ~~[as]~~ that the commissioner deems appropriate; and
- (6) Upon receipt of the commissioner's approval, an escrow depository that has filed:
  - (A) A plan attesting that the company does not retain any outstanding escrow accounts or other business for which an escrow depository license is required by this chapter, shall forthwith surrender to the commissioner all of its escrow depository licenses; or
  - (B) A plan that includes provisions for the sale, exchange, or disposition of outstanding escrow accounts or other business, upon receipt of the commissioner's approval, shall proceed with its plan to cease activity for which a license to operate as an escrow depository is required. Upon completion of its plan, the escrow depository shall file a written notification with the commissioner, signed by its president and secretary, certifying that there are no outstanding escrow liabilities. Filing of the written notification shall be accompanied by the surrender of all escrow depository licenses."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 12, 2002.)

A Bill for an Act Relating to Commercial Employment Agencies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 373-1, Hawaii Revised Statutes, is amended by amending the definition of “principal agent” to read as follows:

““Principal agent” means the responsible managing agent who is responsible for managing an employment agency[;] and who is responsible for all business transactions and actions by the agency’s employees.”

SECTION 2. Section 373-3, Hawaii Revised Statutes, is amended to read as follows:

**“§373-3 Fees; biennial renewal; restoration.** (a) No applicant shall be examined under this chapter until the appropriate fees have been paid.

(b) Every person holding a license under this chapter shall register with the director and pay a biennial renewal fee on or before June 30 of each even-numbered year. Failure to pay the [biennial] renewal fee shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after the expiration upon filing of an application and payment of [a] the renewal and restoration [fee.] fees.

(c) All fees shall be as provided in rules adopted by the director pursuant to chapter 91.”

SECTION 3. Section 373-4, Hawaii Revised Statutes, is amended to read as follows:

**“§373-4 Bond.** [Each licensed] Every employment agency that collects fees from applicants shall give and keep in force a bond with the director in the penal sum of \$5,000 with good and sufficient surety or sureties approved by the director, conditioned[;] that:

- (1) [That the] The licensee shall not violate this chapter[;]; and
- (2) [That the] The licensee shall faithfully, promptly, and truly refund all fees illegally or incorrectly obtained from applicants to the director.”

SECTION 4. Section 373-5, Hawaii Revised Statutes, is amended to read as follows:

**“§373-5 Application for license.** (a) Every individual, partnership, corporation, or association seeking a license to operate an employment agency shall file a written application with the director [which] that shall contain such information and shall be in such form as the director may prescribe; provided that in addition to complying with all other requirements of this chapter, no license shall be issued unless the applicant either has [either] passed a certified employment consultant examination as designated by the director or has in [its] the applicant’s employ a principal agent.

(b) Every principal agent shall file a written application with the director [which] that shall contain such information and shall be in such form as the director may prescribe and no license shall be issued unless the applicant has passed a certified employment consultant examination as designated by the director.

The examination shall cover the following:

- (1) Interview principles and techniques;

- (2) Job descriptions and specifications;
- (3) Placement procedure, including recruitment, solicitation, and referral;
- (4) Aids for applicants;
- (5) Agency management;
- (6) General principles of business law; and
- (7) State statutes and rules relating to an employment agency.

(c) A principal agent who does not engage in the employment agency business in the State during the succeeding year shall not be required to pay the renewal fee as long as the principal agent remains inactive. Should the principal agent wish to resume work as a principal agent at some future time, the principal agent shall so notify the director and remit the renewal fee for the current biennial period.

~~(d) [An employment agency shall file a written application for a branch office with the director which shall contain such information and shall be in such form as the director may prescribe.]~~ Every applicant, including all officers, directors, partners, members, or managers of the applicant, shall possess a reputation for honesty, truthfulness, financial integrity, and fair dealing and shall not have been convicted of a felony directly related to the operation of a commercial employment agency, unless the conviction has been expunged or annulled.”

SECTION 5. Section 373-6, Hawaii Revised Statutes, is amended to read as follows:

“**§373-6 Issuance of license.** (a) Upon receipt of an application for a license to conduct an employment agency, the director may ~~[order the issuance of]~~ issue the license ~~[provided that] if the [application is complete and in proper form.]~~ applicant has met the requirements of this chapter and chapter 436B.

~~(b) Every license issued shall be valid only as to the employment agency and [premises named therein. The location of an employment agency shall not be changed without the written consent of the director and such change of location shall be endorsed on the license.] any branch offices of the employment agency.~~

~~(c) No license shall be issued to an employment agency that establishes or maintains a place of business in, or conducts business from, a home, apartment, hotel room, or any other location where the premises may be considered not in the public interest, unless approved by the director.~~

~~[The] (d) A license issued under this chapter shall not be transferable [except on approval of the director].”~~

SECTION 6. Section 373-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each employment agency shall file ~~[at least once a year with the director a]~~ with its application, an initial schedule of [its] placement fees to be charged to applicants ~~[at such time and in the manner and form as prescribed by the director. The director shall annually compile a listing of the fees charged by all commercial employment agencies licensed under this chapter and make such list].~~ Any change to the schedule of placement fees shall be filed with the director within thirty days of the change, unless the time is extended by the director for good cause. The schedule of placement fees shall be available to the general public at the department.”

SECTION 7. Section 373-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any contract between an applicant and the employment agency shall be in writing and shall contain:

- (1) In bold print enclosed within a conspicuous border, the gross amount of the estimated fee to be charged and the time period on which the fee is based;
- (2) A statement indicating that the fees charged are in accordance with the schedule of placement fees filed with the department [~~and that a listing of the fees charged to applicants by all commercial employment agencies licensed in the State is available for public inspection~~];
- (3) A prominently displayed statement that no fees shall be paid until the job applicant obtains employment and receives the first paycheck, provided that this shall not apply to employer fee paid placements;
- (4) The name and license number of the commercial employment agency; and
- (5) A statement that the applicant has the right to have the agency produce for review a copy of the law and rules regulating the practices of commercial employment agencies.

A copy of the contract shall be provided to the applicant. The director may adopt rules pursuant to chapter 91 to prescribe the form and content of the contract.”

SECTION 8. Section 373-11, Hawaii Revised Statutes, is amended to read as follows:

**“§373-11 Prohibition.** No employment agency licensed under this chapter and no agent or employee of an employment agency shall do, make, or cause to be made or done any of the following acts herein prohibited and every [such] employment agency, its agents, and employees shall do and perform every act, duty, or requirement hereinafter prescribed.

- (1) No employment agency shall cause to be printed, published, or circulated any false, fraudulent, or misleading information, notice, or advertisement, nor shall an employment agency give or cause to be made or given any false promise, misrepresentation, or misleading statement or information.
- (2) No employment agency shall send out any resume or applicant for employment without having first obtained either orally or in writing a bona fide job order from the prospective employer.
- (3) No employment agency shall knowingly send out any applicant for employment to any place where a strike, walk-out, or other labor dispute exists without first furnishing the applicant with a written statement as to the existence of the labor dispute, and the employment agency shall retain on file for two years after the date thereof, a copy of the statement of fact, signed by the applicant so sent.
- (4) No employment agency shall divide or share, or offer to divide or share with any employer, the employer’s employees, agents, or representatives, any fee, charge, or compensation received from any applicant. No employment agency shall cause or attempt to cause the discharge of any person not an employee of the employment agency for the purpose of obtaining other employment through the agency for such person.
- (5) No employment agency shall send out any minor applicant for employment without making an investigation of the nature of the employment or engagement and the duties thereof and reputation of the employer. No employment agency shall wilfully or knowingly send or direct any applicant for employment to any employment of an immoral character. No employment agency shall wilfully or knowingly procure or place or attempt to place any minor in any employment in any place where intoxicating liquors are served or sold.

- (6) No employment agency shall wilfully or knowingly place or assist in placing any applicant in employment in violation of any law of this State or any lawful order, rule, or regulation prescribed by the director.
- (7) No employment agency shall require an applicant to pay any advance fee or any other fee, deposit, or compensation other than as prescribed in this chapter.
- (8) No employment agency shall display, on any sign or window or in any publication the name "United States Employment Service" or "State of Hawaii Employment Service".
- (9) No employment agency or any person connected therewith shall receive or require any applicant to execute any power of attorney, promissory note, negotiable instrument, assignment of wages or salary, note authorizing a confession of judgment, or any instrument or document relating to the liability of the applicant~~[, unless this instrument or other document has been approved both as to form and content by the director or the director's authorized representative].~~
- (10) No employment agency or any person connected therewith shall make representations to applicants concerning prospective positions, the character and probable length of employments, hours, salary, and other relevant terms and conditions of employment which are not, to the best of its knowledge, accurate.
- (11) No employment agency shall withhold from applicants written disclosure of any fees or charges for services rendered prior to the rendering of such services.
- (12) No employment agency shall provide information relating to an applicant's personal record, employment record, qualifications, and salary requirement to an employer directly, by mail, or otherwise, unless such information is accurate and complete to the best of its knowledge~~[,]~~, and the employer has expressed an interest in the applicant.
- (13) No employment agency shall charge an applicant any fee or service charge until such time as an applicant is employed by an employer as a result of the employment agency's efforts and has received actual earnings from employment.
- (14) No employment agency shall require the employer to withhold from the applicant's actual earnings from employment any fee or service charge that has been negotiated by contract between the applicant and the employment agency unless the withholding of such fee or service charge is specifically authorized or requested, by full signature, in writing by the applicant."

SECTION 9. Section 373-13.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§373-13.5] Requirements to maintain license.** (a) Every employment agency that collects fees from applicants shall have and maintain in full force and effect a bond as required under section 373-4. Failure, refusal, or neglect to maintain a bond in full force and effect shall cause the automatic [suspension] forfeiture of the license effective as of the date of expiration or cancellation of the bond. The license shall not be [reinstated] restored until a bond as required under section 373-4 is received by the director.

(b) Failure to effect a [reinstatement] restoration of a [suspended] forfeited license within sixty days of the [suspension] forfeiture shall cause the license [and all fees] to [be] remain forfeited. No fees paid shall be refundable. A licensee who



fails to restore a license as provided in this section shall apply and pay fees as a new applicant.

(c) The director may assess a fee not to exceed \$200 as a condition for the [reinstatement] restoration of a license [suspended] forfeited pursuant to this section.

(d) A licensee, within fifteen calendar days after receipt of notification of the license forfeiture, may request an administrative hearing pursuant to chapter 91 to review the [suspension-] forfeiture.

(e) Every employment agency shall have in its employ a principal agent who is currently licensed under this chapter. The principal agent shall be responsible for the direct management of the employment agency, all business transactions of the employment agency, and all actions by the employees of the employment agency.

(f) No employment agency shall be deemed to have violated any provision of this chapter by acting or assuming to act as an employment agency after the death or dissociation of the principal agent responsible for managing the employment agency; provided that within sixty days from the date of the death or dissociation of the principal agent, the employment agency employs another licensed principal agent or employs an individual who has filed an application for a principal agent license.”

SECTION 10. Section 373-14, Hawaii Revised Statutes, is amended to read as follows:

**“§373-14 Revocation [and cancellation-], suspension, and fines.** In addition to any other actions authorized by law, after affording all interested parties reasonable opportunity for a fair hearing, the director may revoke or [cancel] suspend any license, or impose a fine not to exceed \$1,000 per violation, for cause. In addition to any other grounds for disciplinary action authorized by law, [cause] “cause” means violation of this chapter or a rule of the director.”

SECTION 11. Section 373-19, Hawaii Revised Statutes, is amended to read as follows:

**“§373-19 Powers and duties.** In addition to any other powers and duties authorized by law, the director may adopt, amend, or repeal such rules as the director may deem proper to fully effectuate this chapter[-] and may delegate to the executive officer or other designee any powers or duties the director deems reasonable and proper.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved April 12, 2002.)

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-271, Hawaii Revised Statutes, is amended to read as follows:

**“§286-271 Interisland shipping of vehicles; proof required.** (a) Except as provided in subsection (b), a legal owner of a vehicle shall not ship that vehicle interisland in this State unless the legal owner first presents to the carrier the legal owner’s current certificate of registration showing that the person is the registered owner of the vehicle, identification, and proof of motor vehicle insurance. If the registered owner of the vehicle is not the legal owner of the vehicle, the registered owner ~~[must]~~ shall present to the carrier, the registered owner’s current certificate of registration, identification, ~~[the written consent of the legal owner thereof to the transportation,]~~ and proof of motor vehicle insurance. Duplicate copies of the current registration and proof of motor vehicle insurance shall be acceptable for commercial vehicles as defined in section 286-47(3)(C). An authorized agent of the legal or registered owner may ship the vehicle by presenting~~[-, in addition to the required documents,]~~ the current certificate of registration, identification, proof of motor vehicle insurance, and a notarized letter from the registered or legal owner authorizing the shipment. For an unrecorded owner pending a lawful transfer, a certificate of ownership signed by the previous owner may be submitted<sup>1</sup> for the current certificate of registration for a vehicle purchased within thirty days of shipping. A facsimile of proof of motor vehicle insurance from an insurance company may be accepted for a vehicle purchased within thirty days of shipping. Presentation of proof of motor vehicle insurance shall not be required for:

- (1) Unlicensed propelled vehicles that are not intended for on-road use;
- (2) New unregistered vehicles shipped with a bill of lading; or
- (3) Vehicles owned by the federal, state, or county government.

(b) A legal owner of a damaged vehicle shall not ship that vehicle interisland in this State for repair, disposal, or salvage unless the legal owner first presents to the carrier the legal owner’s current certificate of registration showing that the person is the registered owner of the vehicle or a car dealer’s license. For an unrecorded owner pending a lawful transfer, a certificate of ownership signed by the previous owner may be acceptable for a vehicle purchased within thirty days of shipping. A registered owner of the vehicle who is not the legal owner of the vehicle must present a current certificate of registration. ~~[and a written consent of the legal owner thereof to the transportation or a car dealer’s license.]~~

(c) Any legal or registered owner who violates this section shall be fined not more than \$100.

(d) The carrier shall record by physical inspection the vehicle identification number (VIN) of the vehicle and maintain a record of the transporting of the vehicle along with the description of the vehicle for a period of not less than three years.

~~[(d)]~~ (e) This section shall not apply to licensed dealers who periodically ship in quantities of ten vehicles or more, or whose primary business is the auction of insurance salvage vehicles.

(f) The records maintained as required by this section and all other records and receipts relating to the transportation of vehicles shall be available for inspection by the federal, state, or county law enforcement agencies, and financial institutions during normal business hours.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 18, 2002.)

#### Note

1. Prior to amendment “substituted” appeared here. “Submitted” should be underscored.

A Bill for an Act Relating to State Parks Penalties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 184, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§184- General administrative penalties.** (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation may set, charge, and collect administrative fines to recover administrative fees and costs as documented by receipts or affidavits, including attorney’s fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorney’s fees and costs; or payment for damages or for the cost to correct damages resulting from a violation of this chapter, any rule adopted, or permit issued thereunder.

(b) The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$10,000.

(c) In addition, a fine of up to \$5,000 may be levied for each:

- (1) Archaeological or historical feature appropriated, damaged, removed, excavated, disfigured, defaced, or destroyed;
- (2) Geological feature destroyed, disturbed, mutilated, dug, removed, excavated, quarried, blasted, or exploded;
- (3) Public property destroyed, defaced, removed, damaged, or possessed;
- (4) Wildlife molested, disturbed, injured, trapped, taken, caught, possessed, poisoned, introduced, or killed; or
- (5) Habitat disturbed,

in violation of this chapter or any rule adopted thereunder.

(d) Any criminal penalty for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from recovering additional administrative fines, fees, and costs, including attorney’s fees and costs.”

SECTION 2. Section 184-5, Hawaii Revised Statutes, is amended to read as follows:

**“§184-5 Rules and enforcement; penalty.** (a) The department may, subject to chapter 91, make, amend, and repeal rules ~~[and regulations]~~ having the force and effect of law, governing the use and protection of the state park system, including state monuments as established under section 6E-31, and including any private property over which there has been granted to the State any right of free public access or use for recreational, park, viewing of any historical, archaeological, natural, or scientific feature, object, or site, or related purpose, or property thereon, and also governing the use and protection of any recreational, scenic, historical, archaeological, natural, scientific, and related resources of state and private lands, and enforce such rules ~~[and regulations]~~. Any person who violates any of the rules ~~[and regulations]~~ so prescribed shall be held liable for restoration of or restitution for any damages to public or private property and shall also be subject to the confiscation of any tools and equipment used in such violation and of any plants, objects, or artifacts removed illegally from such properties ~~[-and shall be guilty of a petty misdemeanor]~~. Except as otherwise provided by the department, the more restrictive

rules ~~[and regulations]~~ of the department shall apply in any unit of the state park system or any public use area which is also governed by the rules ~~[and regulations]~~ of any forest reserve, public hunting ground, or other department district or area.

(b) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued thereunder, in addition to any other penalties, shall be guilty of a petty misdemeanor and shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(c) The fines specified in this section shall not be suspended or waived. Each day of each violation shall constitute a separate offense.

(d) Any civil penalty for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.

(e) The department may confer on the director of state parks and upon other employees of the division the powers of police officers, including the power to serve and execute warrants and arrest offenders in all matters relating to the enforcement, in any state park, parkway, or state monument, or in any private property over which there has been granted to the State any right of free public access or use for recreational, park, viewing of any historical, archaeological, natural, or scientific feature, object, or site, or related purpose of:

- (1) ~~[the]~~ The laws applicable to the state parks and parkways and to historical objects and sites and the rules ~~[and regulations]~~ adopted under the provisions of this section; and
- (2) ~~[traffic]~~ Traffic laws and ordinances.

Such police powers shall also extend to the enforcement of<sup>1</sup> laws of the State and the rules ~~[and regulations]~~ of the department relative to the protection and proper utilization of the recreational, scenic, historical, natural, and archaeological, scientific, and related resources of state and private lands. Such conferring of powers shall include the designation of such employees as state parks enforcement officers.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

#### Notes

1. Prior to amendment “the” appeared here.
2. Edited pursuant to HRS §23G-16.5.

## ACT 25

H.B. NO. 1727

A Bill for an Act Relating to Driver’s License Instruction Permit Renewal.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-110, Hawaii Revised Statutes, is amended to read as follows:

**“§286-110 Instruction permits.** (a) Any person aged fifteen years and six months or more who, except for the person’s lack of instruction in operating a motor vehicle, would be qualified to obtain a driver’s license issued under this part may

apply for a temporary instruction permit at the office of the examiner of drivers in the county in which the applicant resides; provided that the applicant complies with section 286-102.5.

(b) The examiner of drivers shall examine every applicant for an instruction permit. The examination shall include tests of the applicant's:

- (1) Eyesight and other physical or mental capabilities to determine if the applicant is capable of operating a motor vehicle;
- (2) Understanding of highway signs regulating, warning, and directing traffic; and
- (3) Knowledge of the traffic laws, ordinances, or regulations of the State and the county where the applicant resides or intends to operate a motor vehicle.

(c) If the examiner of drivers is satisfied that the applicant is qualified to receive an instruction permit, the examiner of drivers shall issue the permit entitling the applicant, while having the permit in the applicant's immediate possession, to drive a motor vehicle upon the highways for a period of one year; provided that an applicant who is registered in a driver training course shall be issued a temporary instruction permit for the duration of the course and the termination date of the course shall be entered on the permit. A person who is not licensed to operate the category of motor vehicles to which the driving training course applies shall not operate a motor vehicle in connection with the driving training course without a valid temporary instruction permit.

(d) Except when operating a motor scooter or motorcycle, the holder of a temporary instruction permit shall be accompanied by a person who is eighteen years of age or older and licensed to operate the category of motor vehicles in which the motor vehicle which is being operated belongs. The licensed person shall occupy a seat as near the permit holder as is practical while the motor vehicle is being so operated.

(e) No holder of a temporary instruction permit shall operate a motorcycle or a motor scooter during hours of darkness or carry any passengers.

(f) No holder of a category 1 or 2 temporary instruction permit shall have the permit renewed, nor shall the holder be issued another temporary instruction permit for the same purpose, unless the holder has taken the examination for a category 1 or 2 license at least once prior to the expiration of the temporary instruction permit. If the holder of a temporary instruction permit fails to meet the requirements of this section, the holder shall not be permitted to apply for another category 1 or 2 temporary instruction permit for a period of three months. Nothing in this subsection shall affect the ~~[rights]~~ right and ~~privileges~~<sup>1</sup> privilege of any holder of a category 1 or 2 temporary instruction permit ~~[from obtaining]~~ to obtain a temporary instruction permit or driver's license for the operation of any other type of motor vehicle.

(g) The examiner of drivers may accept an application for renewal of an instruction permit no more than thirty days prior to or ninety days after the expiration date of the instruction permit, whereupon the applicant for renewal of an instruction permit shall be exempt from subsection (b)(2) and (b)(3). If an application for renewal of an instruction permit is not made within ninety days after the expiration date of the permit, the applicant shall be treated as applying for a new instruction permit and examined in accordance with subsection (b)."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved April 23, 2002.)

Note

1. So in original.

ACT 26

H.B. NO. 1804

A Bill for an Act Relating to Expungement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-88, Hawaii Revised Statutes, is amended to read as follows:

**“§571-88<sup>1</sup> [Expungement orders.] Orders expunging juvenile arrest records.** (a) The court may issue an order expunging [an] a juvenile arrest record of a [minor] person upon written application by the [minor] person or, if the person is a minor, the minor’s parent or guardian[~~,-where~~]; provided the arrest was made pursuant to section 571-11(1) or (2) and the arrest record meets the following criteria:

- (1) The matter was not referred to the prosecuting attorney or the family court and the person [arrested] was not counseled and released by the police; or
- (2) The matter was referred to the prosecuting attorney or family court and:
  - (A) The person [arrested] was not adjudicated responsible[;] by the court; or
  - (B) The matter was dismissed with prejudice.

(b) Before issuing an order to expunge an arrest record [that falls under subsection (a)(1),] of a matter that was never referred to the court, the court shall consult with [appropriate law enforcement agencies to determine if there is any reason to retain the arrest record.]<sup>1</sup>

~~(c) The court shall issue an order expunging the arrest record of an adult, which was incurred while the adult was a minor, upon written application of the adult where:~~

- ~~(1) The arrest was made pursuant to section 571-11(1) or (2); and~~
- ~~(2) The arrest record meets the criteria under subsection (a).~~

~~Upon issuance of the order of expungement, the court shall forward copies and issue a certificate pursuant to subsection (d). Subsection (b) shall not apply to expungement orders under this subsection] the prosecuting attorney in the appropriate circuit.~~

~~[(d)]~~ (c) Upon issuance of an expungement order under this section, the court shall:

- (1) Forward copies of the expungement order to the police department and the department of the attorney general for expungement of the arrest record; and
- (2) Issue to the person for whom the expungement order was issued, a certificate stating that an expungement order was issued and that its effect is to annul the record of one or more specific arrests. The certificate shall:
  - (A) Authorize the person to state, in response to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest; and
  - (B) State that the person shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for making any statement authorized by the certificate.

~~[(e)]~~ (d) A person whose arrest record has been expunged ~~[pursuant to subsection (a) or (e)]~~ under this section shall not be subject to any action for perjury, civil suit, discharge from employment, or any other adverse action for responding to any question or inquiry, whether or not under oath, that the person has no record regarding the specific arrest expunged.

~~[(f)]~~ (e) As used in this section:

“Arrest record” means any record maintained by a county police department or the department of the attorney general under ~~[section 846-2.5(b) and]~~ chapters 846 and 846D, relating to the arrest of the minor for a specific offense, including fingerprints taken during the arrest and maintained under section 846-2.5(b).

“Expunge” means a process defined by agency policy in which records are segregated and kept confidential, or destroyed.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

**Note**

1. So in original.

**ACT 27**

H.B. NO. 1825

A Bill for an Act Relating to the Revised Uniform Commercial Code Article 9 - Secured Transactions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 490:9-102, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “agricultural lien” to read:  
““Agricultural lien” means an interest~~[-, other than a security interest,]~~ in farm products:

- (1) Which secures payment or performance of an obligation for:
  - (A) Goods or services furnished in connection with a debtor’s farming operation; or
  - (B) Rent on real property leased by a debtor in connection with its farming operation;
- (2) Which is created by statute in favor of a person that:
  - (A) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or
  - (B) Leased real property to a debtor in connection with the debtor’s farming operation; and
- (3) Whose effectiveness does not depend on the person’s possession of the personal property.”

2. By amending the definition of “health-care-insurance receivable” to read:  
““Health-care-insurance receivable” means an interest in or claim under a policy of insurance ~~[which]~~ that is a right to payment of a monetary obligation for health-care goods or services provided~~[-]~~ or to be provided.”

SECTION 2. Section 490:9-304, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) The following rules determine a bank’s jurisdiction for purposes of this part:

- (1) If an agreement between the bank and ~~[the debtor]~~ its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the bank's jurisdiction.
- (2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
- (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
- (4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.
- (5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located."

SECTION 3. Section 490:9-309, Hawaii Revised Statutes, is amended to read as follows:

**"§490:9-309 Security interest perfected upon attachment.** The following security interests are perfected when they attach:

- (1) A purchase-money security interest in consumer goods, except as otherwise provided in section 490:9-311(b) with respect to consumer goods that are subject to a statute or treaty described in section 490:9-311(a);
- (2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (3) A sale of a payment intangible;
- (4) A sale of a promissory note;
- (5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) A security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e), until the debtor obtains possession of the collateral;
- (7) A security interest of a collecting bank arising under section 490:4-210;
- (8) A security interest of an issuer or nominated person arising under section 490:5-118;
- (9) A security interest arising in the delivery of a financial asset under section 490:9-206(c);
- (10) A security interest in investment property created by a broker or securities intermediary;
- (11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; ~~[and]~~
- (13) A security interest created by an assignment of a beneficial interest in a decedent's estate~~[-]; and~~
- (14) A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance."



## ACT 28

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

## ACT 28

H.B. NO. 1941

A Bill for an Act Relating To Agriculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the seed corn industry is one of the larger commodities that have consumed many of the former sugarcane lands on Kauai and Oahu. Because of the magnitude of seed corn operations, some of the companies use commercial transportation modes to transport containers of seed corn from the fields to their processing facilities. Therefore, the legislature finds that similar to sugarcane and pineapple, the seed corn industry should be exempted from the public utility commission rates in perpetuity.

Thus, the purpose of this bill is to repeal the June 30, 2002, sunset date of Act 120, Session Laws of Hawaii 1997, which will then continue the exemption of the transportation of seed corn to a processing facility.

SECTION 2. Act 120, Session Laws of Hawaii 1997, is amended by amending section 8 to read as follows:

~~“SECTION 8. This Act shall take effect upon its approval [; provided that on June 30, 2002, section 2 of this Act shall be repealed and section 271-5, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act].”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect on June 29, 2002.

(Approved April 23, 2002.)

## ACT 29

H.B. NO. 2158

A Bill for an Act Relating to Commercial Driver Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-235.5, Hawaii Revised Statutes, is amended to read as follows:

**“§286-235.5 Persons exempt from license.** The following persons shall be exempt from licensure under this part:

- (1) Any active duty military personnel while operating a commercial motor vehicle in the service of the United States Department of Defense, provided that the driver has a current valid license or permit from the Department of Defense to drive the commercial motor vehicle; and

- (2) Federal, state, and county firefighters, and law enforcement officers who drive federal, state, or county fire trucks[,] or authorized emergency vehicles; provided that they are trained by the federal, state, or county government. For purposes of this section, “authorized emergency vehicle” shall have the same meaning as in section 291C-1.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

## ACT 30

H.B. NO. 2298

A Bill for an Act Relating to Elections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 12-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Nomination papers shall be filed as follows: [for]

- (1) ~~For members of Congress, state, and county offices, [and the board of trustees of the office of Hawaiian affairs,]~~ nomination papers shall be filed with the chief election officer, or clerk in case of county offices, not later than 4:30 p.m. on the sixtieth calendar day prior to the primary, special primary, or special election provided that if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding. A state candidate from the counties of Hawaii, Maui, and Kauai may file the declaration of candidacy with the respective clerk. The clerk shall transmit to the office of the chief election officer the state candidate’s declaration of candidacy without delay. However, if a special primary or special election is to be held by a county and the county charter requires that the council shall issue a proclamation calling for the election to be held within a specified period of time, and if that requirement would not allow the filing of nomination papers with the appropriate office by the sixtieth calendar day prior to the day for holding the special primary or special election, the council shall establish the deadline for the filing of nomination papers in the proclamation calling for the election[.]; and
- (2) For the board of trustees for the office of Hawaiian affairs, nomination papers shall be filed with the chief election officer, not later than 4:30 p.m. on the sixtieth calendar day prior to the primary election referred to in paragraph (1); provided that if that day is a Saturday, Sunday, or holiday, then not later than 4:30 p.m. on the first working day immediately preceding.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

A Bill for an Act Relating to Direct Payment of Child Support.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 576D-10, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The court [~~or office~~] may approve an alternative arrangement for the direct payment of child support where either:

- (1) The obligor or custodial parent demonstrates and the court [~~or office~~] finds that there is good cause not to require immediate withholding; or
- (2) A written agreement is reached between the obligor and the custodial parent and signed by both parties;

provided that in either case where child support has been ordered previously, an alternative arrangement for direct payment shall be approved only where the obligor provides proof of the timely payment of previously ordered support. For purposes of this section, good cause to approve an alternative arrangement shall be based upon a determination by the court [~~or office~~], either in writing or on the record, that implementing income withholding would not be in the best interests of the child. Such a determination shall include a statement setting forth the basis of the court’s [~~or office’s~~] conclusion.”

SECTION 2. Section 576E-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In exercising the powers conferred upon the attorney general in section 576E-2, the hearings officers shall have the authority to conduct hearings and enter the following orders:

- (1) Child support orders which have the effect of modifying, suspending, terminating, or enforcing the child support provisions of orders of the family courts;
- (2) Child support orders establishing, modifying, suspending, terminating, or enforcing child support obligations;
- (3) Orders enforcing the collection of spousal support when child support is being established, modified, or enforced;
- (4) Income withholding orders pursuant to section 576E-16;
- (5) Automatic income assignment orders pursuant to sections 571-52.2 and 576D-14;
- (6) Interstate income withholding orders pursuant to chapter 576B;
- (7) State income tax refund setoff orders pursuant to section 231-54;
- (8) Orders determining whether Aid to Families with Dependent Children pass through payments were properly distributed;
- (9) Orders determining whether a party should be required to post bond in order to secure payment of past due support pursuant to section 576D-6;
- (10) Medical insurance coverage orders;
- (11) Orders suspending or denying the granting, the renewal, the reinstatement, or the restoration of licenses or applications of an obligor or individual for noncompliance with an order of support or failure to comply with a subpoena or warrant relating to a paternity or child support proceeding, and authorizations allowing the reinstatement of suspended licenses or consideration of license applications pursuant to section 576D-13;

- (12) Orders concerning whether a responsible parent's child support obligation should be reported to consumer credit reporting agencies pursuant to chapter 576D;
- ~~[(13) Orders permitting alternative arrangements pursuant to section 576D-40;] and~~
- ~~[(14)]~~ (13) Orders in other child support areas as authorized by the attorney general."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

## ACT 32

H.B. NO. 2473

A Bill for an Act Relating to the Uniform Securities Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 485-4, Hawaii Revised Statutes, is amended to read as follows:

**"§485-4 Exempt securities.** The following securities are exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state or territory, any political subdivision of a state or territory, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of the province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by a financial services loan company duly licensed under the financial services loan law of the State of Hawaii;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in the State;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state or territory and authorized to do business in the State;
- (6) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of the State;

- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is:
  - (A) Subject to the jurisdiction of the Interstate Commerce Commission;
  - (B) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act;
  - (C) Regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or
  - (D) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States or any state or territory;
- (8) Any security, other than a security that is a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any registration or filing requirements under this chapter, that is listed or approved for listing upon notice of issuance on any exchange registered or exempted under the Securities Exchange Act of 1934, as amended; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe for any of the foregoing;
- (9) Any security issued by any issuer organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal;
- (11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan;
- (12) Any option on a commodity futures contract subject to regulation under the Commodity Exchange Act;
- (13) Any cooperative association membership stock, membership certificates or shares, or membership capital, pursuant to section 421C-36, or chapter 421;
- (14) Any security for which a registration statement has been filed under the Securities Act of 1933; provided that no sale shall be made until the registration statement has become effective; ~~and~~
- (15) Any variable annuity contract which is an investment contract prepared by a life insurance company designed to offer continuous income through participation in a mutual fund portfolio or a variable annuity contract based upon a separate account which is registered as a management investment company with the Securities and Exchange Commission[:]; and
- (16) Any security appearing on the list of over-the-counter and foreign securities approved for margin by the Board of Governors of the Federal Reserve System or any such security incorporated by reference to the list of over-the-counter and foreign securities approved for margin by the Board of Governors of the Federal Reserve System; any other securities of the same issuer that are of senior or substantially

equal rank; and any warrant or right to purchase or subscribe to any security described in this paragraph.”

SECTION 2. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

“**§485-6 Exempt transactions.** The following transactions shall be exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

- (1) Any isolated nonissuer transaction, whether effected through a dealer or not;
- (2) Any nonissuer ~~[distribution of]~~ transaction in an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer’s officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;
- (3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;
- (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
- (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (9) Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:
  - (A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) during any twelve consecutive months;
  - (B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;
  - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and
  - (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;

- (10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;
- (11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the State;
- (12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward the order is pending under either this chapter or the Act;
- (13) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease which entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, subject, however, to section 485-7;
- (14) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State of an apartment in a condominium project, and a rental management contract relating to the apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words "apartment", "condominium", and "project" are defined as they are defined in section 514A-3;
- (15) ~~[(A)] Any transactions not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933[-but not including any transaction specified in the rules and regulations thereunder; or~~
  - ~~(B) Any offer or sale of securities made in compliance with rules 501, 502, 503, 505, and 506 of Regulation D, 17 Code of Federal Regulations section 230.501, under the Securities Act of 1933];~~
- (16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:
  - (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
  - (ii) The issuer is not in the development stage, without specific business plan or purpose;
  - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
  - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security.

Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;

- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
    - (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
    - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
    - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
    - (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
  - (C) Subparagraph (B) shall not apply if:
    - (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
    - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
    - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;
  - (D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section 485-24.6, and a \$200 filing fee; and
  - (E) For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a);
- (17) Any offer or sale of a security effected by a resident of Canada who is excluded from the definition of "dealer" under section 485-1(3)(E); [and]



- (18) Any transaction that is exempt or would be exempt under rule 701, 17 Code of Federal Regulations section 230.701, promulgated under section 3(b) of the Securities Act of 1933[.];
- (19) Any offer or sale of securities made in compliance with rules 501, 502, 503, 505, and 506 of Regulation D, 17 Code of Federal Regulations sections 230.501, 230.502, 230.503, 230.505, 230.506, 230.507, and 230.508 under the Securities Act of 1933; and
- (20) Any transaction that the commissioner may exempt, conditionally or unconditionally, by rules adopted in accordance with chapter 91 that:
  - (A) Further the objectives of compatibility with exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states; or
  - (B) The commissioner finds that registration is not necessary or appropriate in the public interest for the protection of investors.”

SECTION 3. Section 485-14, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Investment adviser’s approval; bond~~[, insurance required]~~. If the commissioner finds that the applicant for registration as an investment adviser is eligible for registration, the commissioner shall register the investment adviser upon a payment of a fee hereinafter provided, and, except as otherwise provided in this subsection, upon the investment adviser filing a bond in [the] a sum [of \$50,000 with the State as the obligee. The bond requirement shall be \$5,000 if the adviser does not have custody of or discretionary authority over client money, securities, or other assets.] as provided in rules adopted by the commissioner. The bond shall be conditioned upon the faithful compliance with this chapter by the investment adviser. The bond shall be executed as a surety by a surety company authorized to do business in the State~~[; provided that in lieu of the above bond any investment adviser may deposit and keep deposited with the commissioner cash in the applicable amount of \$50,000 or \$5,000] or [securities] as a security to be approved by the [commissioner having a market value at all times of not less than \$50,000 or \$5,000 which cash or securities shall be held in trust to fulfill the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the investment adviser depositing the same. In addition, except as otherwise provided in this subsection, the investment adviser shall file with the commissioner a certificate of insurance which indicates that the investment adviser’s business is insured for errors and omissions for at least \$100,000 per occurrence with a \$200,000 aggregate for those with less than two years experience and a \$500,000 aggregate for those with two or more years of experience for the protection of the investment adviser’s client, or shall meet an alternative requirement which also provides for the protection of the client of the investment adviser, as determined by rules adopted by the] commissioner. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state’s net capital and bonding requirements, if any.”~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2002.

(Approved April 23, 2002.)

ACT 33

H.B. NO. 2496

A Bill for an Act Relating to Child Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to part VIII to be appropriately designated and to read as follows:

**“§346- Investigation.** Upon receiving a report that a person may be caring for more than two children unrelated to the caregiver by blood, marriage, or adoption, or providing care for a child for more than six hours per week, without a child care license issued by the department, the department may conduct an investigation for the limited purpose of determining the number of children in care who are unrelated to the caregiver by blood, marriage, or adoption, and the number of hours of care provided per week, in accordance with the following provisions:

- (1) The department may request access to the location indicated in the report; or
- (2) The department may file a complaint with the district court in the circuit where the location indicated in the report is; and the district court, upon probable cause, may issue a search warrant, directed to the department and the appropriate county police department, if necessary, to conduct an investigation pursuant to this section between the hours of sunrise and sunset.”

SECTION 2. Section 346-152, Hawaii Revised Statutes, is amended to read as follows:

**“§346-152 Exclusions; exemptions.** (a) Nothing in this part shall be construed to include:

- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;
- (2) A person, group of persons, or facility caring for a child less than six hours a week;
- (3) A kindergarten, school, or program licensed by the department of education;
- (4) A program that provides exclusively for a specialized training or skill development for children, including, but not limited to, programs providing such activities as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
- (5) A multiservice organization or community association, duly incorporated under the laws of the State, which operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through seventeen years of age;
- (6) Programs for children four years of age and older, which operate for no more than two consecutive calendar weeks in a three-month period;

- (7) A provider agency operating or managing a homeless facility[;] or any other program for homeless persons authorized under part IV of chapter 201G;
- (8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;
- (9) Child care programs for children five years of age and older conducted by counties pursuant to section 302A-408; provided that each county adopt rules for ~~[their]~~ its programs; ~~[and]~~
- (10) Any person who enters a home in a child caring capacity and only cares for children who are of that household[-]; and
- (11) A person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption.

(b) Staff members of programs taught solely in Hawaiian ~~[which]~~ that promote fluency in the Hawaiian language shall be exempt from any ~~[regulations]~~ rules requiring academic training or certification.

(c) Minimum health and safety requirements or standards as required by federal law may be imposed on any of the groups listed in this section ~~[which]~~ that provide child care services and are reimbursed with federal funds.

(d) Any person asserting an exemption under this section shall cooperate with the department in investigations relating to unlicensed child care.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 34**

H.B. NO. 2514

A Bill for an Act Relating to Tattoo Artists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-377, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§321-377]] Suspension [or], revocation, or denial of the renewal of license.~~** The director may revoke ~~[or]~~, suspend, or deny the renewal of the license of any person applying to be licensed under this part who:

- (1) Is found guilty of any fraud, deceit, or misconduct in the practice of the occupation of tattoo artist; or
- (2) Violates this part or any of the rules adopted by the department.

In every case where it is proposed to revoke ~~[or]~~, suspend, or deny the renewal of a license, the director shall give the licensee or applicant concerned notice and a hearing. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing. All hearings shall be conducted pursuant to chapter 91.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

ACT 35

H.B. NO. 2550

A Bill for an Act Relating to Appurtenant Rights Under the Water Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 174C-5, Hawaii Revised Statutes, is amended to read as follows:

**“§174C-5 General powers and duties.** The general administration of the state water code shall rest with the commission on water resource management. In addition to its other powers and duties, the commission:

- (1) Shall carry out topographic surveys, research, and investigations into all aspects of water use and water quality[-];
- (2) Shall designate water management areas for regulation under this chapter where the commission, after the research and investigations mentioned in paragraph (1), shall consult with the appropriate county council and county water agency, and after public hearing and published notice, finds that the water resources of the areas are being threatened by existing or proposed withdrawals of water[-];
- (3) Shall establish an instream use protection program designed to protect, enhance, and reestablish, where practicable, beneficial instream uses of water in the State[-];
- (4) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons[-];
- (5) May enter, after obtaining the consent of the property owner, at all reasonable times upon any property other than dwelling places for the purposes of conducting investigations and studies[-] or enforcing any of the provisions of this code, being liable, however, for actual damage done. If consent cannot be obtained, reasonable notice shall be given prior to entry[-];
- (6) Shall cooperate with federal agencies, other state agencies, county or other local governmental organizations, and all other public and private agencies created for the purpose of utilizing and conserving the waters of the State, and assist [such] these organizations and agencies in coordinating the use of their facilities and participate in the exchange of ideas, knowledge, and data with [such] these organizations and agencies. For this purpose the commission shall maintain an advisory staff of experts[-];
- (7) Shall prepare, publish, and issue such printed pamphlets and bulletins as the commission deems necessary for the dissemination of information to the public concerning its activities[-];
- (8) May appoint and remove agents and employees including hearings officers, specialists, and consultants necessary to carry out the purposes of this chapter and, who may be engaged by the commission without regard to the requirements of chapter 76<sup>1</sup> and section 78-1[-];
- (9) May acquire, lease, and dispose of such real and personal property as may be necessary in the performance of its functions, including the

acquisition of real property for the purpose of conserving and protecting water and water related resources as provided in section 174C-14[-];

- (10) Shall identify, by continuing study, those areas of the State where salt water intrusion is a threat to fresh water resources and report its findings to the appropriate county mayor and council and the public[-];
- (11) Shall provide [such] coordination, cooperation, or approval necessary to the effectuation of any plan or project of the federal government in connection with or concerning the waters of the State. The commission shall approve or disapprove [such] any federal plans or projects on behalf of the State. No other agency or department of the State shall assume the duties delegated to the commission under this paragraph[-]; except that the department of health shall continue to exercise [such] the powers vested in it with respect to water quality, and except that the department of business, economic development, and tourism shall continue to carry out its duties and responsibilities under chapter 205A[-];
- (12) ~~[Plan]~~ Shall plan and coordinate programs for the development, conservation, protection, control, and regulation of water resources, based upon the best available information, and in cooperation with federal agencies, other state agencies, county or other local governmental organizations, and other public and private agencies created for the utilization and conservation of water[-];
- (13) Shall catalog and maintain an inventory of all water uses and water resources[-]; and
- (14) Shall determine appurtenant water rights, including quantification of the amount of water entitled to by that right, which determination shall be valid for purposes of this chapter.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

**Note**

1. So in original.

**ACT 36**

H.B. NO. 2560

A Bill for an Act Relating to Sexual Offenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 707-731, Hawaii Revised Statutes, is amended to read as follows:

**“§707-731 Sexual assault in the second degree.** (1) A person commits the offense of sexual assault in the second degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; or

- (c) The person, while employed [~~in~~]:
  - (i) In a state correctional facility;
  - (ii) By a private company providing services at a correctional facility;
  - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
  - (iv) By a private correctional facility operating in the state of Hawaii; or [~~while employed as~~]
  - (v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person residing in a private correctional facility operating in the state of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.
- (2) Sexual assault in the second degree is a class B felony.”

SECTION 2. Section 707-732, Hawaii Revised Statutes, is amended to read:

**“§707-732 Sexual assault in the third degree.** (1) A person commits the offense of sexual assault in the third degree if:

- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
- (c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:
  - (i) The person is not less than five years older than the minor; and
  - (ii) The person is not legally married to the minor.
- (d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;
- (e) The person, while employed in a state correctional facility[~~;~~]:
  - (i) By a private company providing services at a correctional facility;
  - (ii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute; or
  - (iii) By a private correctional facility operating in the state of Hawaii, knowingly subjects to sexual contact an imprisoned person, a person committed to the director of public safety, or a person residing in a private correctional facility operating in the state of Hawaii or causes the person to have sexual contact with the actor; or
- (f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices.

(2) Sexual assault in the third degree is a class C felony.”

SECTION 3. Act 1, Second Special Session Laws of Hawaii 2001, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed on June 30, 2003; provided that [sections]:

- (1) Section 707-730(1) [and 707-732(1)], Hawaii Revised Statutes, [are] is reenacted in the form in which [they] it read on the day before the approval of this Act[-]; and
- (2) Section 707-732(1), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act, as further amended by section 2 of Act 36, Session Laws of Hawaii 2002.”

SECTION 4. In printing this Act, the revisor of statutes shall insert the appropriate number of this Act in section 3.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect July 1, 2002.

(Approved April 23, 2002.)

## ACT 37

H.B. NO. 2580

A Bill for an Act Relating to Driver Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

- (1) ~~[Motor scooters;]~~ Mopeds;
- (2) Motorcycles and motor scooters;
- (3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of fifteen thousand pounds or less; and
- (4) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of fifteen thousand one through twenty-six thousand pounds.

A school bus or van operator shall be properly licensed to operate the category of vehicles that the operator operates as a school bus or van and shall comply with the standards of the department of transportation as provided by rules adopted pursuant to section 286-181.”

SECTION 2. Section 291C-194, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) No person shall drive a moped unless the person:
- (1) Possesses a valid driver’s license of any category listed in section 286-102 [~~provided that if the person applies for a driver’s license solely to operate a moped, the person may use a moped to meet the licensing requirements in section 286-102 and shall be licensed in the same category as motor scooters. After meeting the licensing requirements, the person shall also be licensed to operate motor scooters;~~] or 286-239; and
  - (2) Meets the requirements of section 286-105(3).”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2003.

(Approved April 23, 2002.)

## ACT 38

S.B. NO. 2635

A Bill for an Act Relating to Tourism.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 201B-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[§201B-3]~~ **Powers[.] and duties.** (a) Except as otherwise limited by this chapter, the board may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter, provided that the authority may enter into contracts and agreements for a period of up to five years;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
- (6) Through its executive director represent the authority in communications with the governor and with the legislature;
- (7) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76, 77, and 78;
- (8) Through its executive director purchase supplies, equipment, or furniture;
- (9) Through its executive director allocate the space or spaces which are to be occupied by the authority and appropriate staff;
- (10) Engage the services of qualified persons to implement the State’s tourism marketing plan or portions thereof as determined by the board;
- (11) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (12) Procure insurance against any loss in connection with its property and other assets and operations in such amounts from such insurers as it deems desirable;



- (13) Contract for, and accept gifts or grants in any form from any public agency or any other source;
- (14) Create a vision and develop a long range plan for tourism in Hawaii, including product development, infrastructure, and diversification issues;
- (15) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State;
- (16) Develop and implement the state tourism strategic marketing plan, which shall be updated every three years, to promote and market the State as a desirable visitor destination;
- (17) Have a permanent, strong focus on marketing and promotion;
- (18) Conduct market development-related research as necessary;
- (19) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
- (20) Work to eliminate or reduce barriers to travel in order to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
- (21) Market and promote sports-related activities and events;
- (22) Coordinate the development of new products with the public and private sectors, including the development of sports, culture, health, education, business, and eco-tourism;
- (23) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
- (24) Encourage the development of tourism educational, training, and career counseling programs; and
- (25) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary[; and
- (26) ~~Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter].~~

(b) The board shall be responsible for:

- (1) Promoting, marketing, and developing the tourism industry in the State;
- (2) Arranging for the conduct of research through contractual services with the University of Hawaii or any agency or other qualified persons concerning social, economic, and environmental aspects of tourism development in the State;
- (3) Providing technical or other assistance to agencies and private industry upon request;
- (4) Developing and implementing the state tourism marketing plan; and
- (5) Reviewing annually the expenditure of public funds by any visitor industry organization with which the board contracts to perform tourism promotion, marketing, and development and making recommendations necessary to ensure the effective use of the funds for the development of tourism. The board shall also prepare annually a report of expenditures, including descriptions and evaluations of programs funded, together with any recommendations the board may make and shall submit the report to the governor and the legislature as part of the annual report required under section 201B-16.

(c) The board shall do any and all things necessary to carry out its purposes, to exercise the powers and responsibilities given in this chapter, and to perform other functions required or authorized by law.

SECTION 2. Chapter 201, part VII, Hawaii Revised Statutes, is repealed.

SECTION 3. Chapter 203, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 201B-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Moneys in the tourism special fund shall be used by the authority for the purposes of this chapter, provided that not more than three per cent of this amount shall be used for administrative expenses; provided further that of this amount the sum of \$15,000 shall be made available for a protocol fund to be expended at the discretion of the executive director[; ~~provided further that moneys in the tourism special fund shall be used for the salaries and expenses of the office of tourism established in section 201-92].~~”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

## ACT 39

S.B. NO. 2723

A Bill for an Act Relating to the Department of Commerce and Consumer Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the

compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, [and] the special handling fund, section 415-128, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, [~~the insurance examiners' revolving fund, section 431:2-307, the motor vehicle insurance administration revolving fund, section 431:10C-115.5,~~] and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section [444-29, and the public broadcasting revolving fund, section 314-13.] 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to [~~chapters~~] chapter 76 [and 77], hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department [~~with the exception of costs related to the Hawaii public broadcasting authority~~]. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
- (5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**"§36-27 Transfers from special funds for central service expenses.**

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
  - (2) School cafeteria special funds of the department of education;
  - (3) Special funds of the University of Hawaii;
  - (4) State educational facilities improvement special fund;
  - (5) Convention center capital and operations special fund under section 206X-10.5;
  - (6) Special funds established by section 206E-6;
  - (7) Housing loan program revenue bond special fund;
  - (8) Housing project bond special fund;
  - (9) Aloha Tower fund created by section 206J-17;
  - (10) Domestic violence prevention special fund under section 321-1.3;
  - (11) Spouse and child abuse special account under section 346-7.5;
  - (12) Spouse and child abuse special account under section 601-3.6;
  - (13) Funds of the employees' retirement system created by section 88-109;
  - (14) Unemployment compensation fund established under section 383-121;
  - (15) Hawaii hurricane relief fund established under chapter 431P;
  - (16) Hawaii health systems corporation special funds;
  - (17) Boiler and elevator safety revolving fund established under section 397-5.5;
  - (18) Tourism special fund established under section 201B-11;
  - (19) Department of commerce and consumer affairs' special funds;
  - (20) Compliance resolution fund established under section 26-9;
  - (21) Universal service fund established under chapter 269;
  - (22) Integrated tax information management systems special fund under section 231-3.2;
  - ~~[(23) Insurance regulation fund under section 431:2-215;~~
  - ~~[(24)] (23) Hawaii tobacco settlement special fund under section 328L-2;~~
  - ~~[(25)] (24) Emergency budget and reserve fund under section 328L-3;~~
  - ~~[(26)] (25) Probation services special fund under section 706-649;~~
  - ~~[(27)] (26) High technology special fund under section 206M-15.5;~~
  - ~~[(28)] (27) Public schools special fees and charges fund under section 302A-1130(f);~~
  - ~~[(29)] (28) Cigarette tax stamp enforcement special fund established by section 28-14;~~
  - ~~[(30)] (29) Cigarette tax stamp administrative special fund established by section 245-41.5; and~~
  - ~~[(31)] (30) Tobacco enforcement special fund established by section 28-15;~~
- shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;

- (2) Special out-of-school time instructional program fund under section 302A-1310;
  - (3) School cafeteria special funds of the department of education;
  - (4) Special funds of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Domestic violence prevention special fund under section 321-1.3;
  - (9) Spouse and child abuse special account under section 346-7.5;
  - (10) Spouse and child abuse special account under section 601-3.6;
  - (11) Funds of the employees' retirement system created by section 88-109;
  - (12) Unemployment compensation fund established under section 383-121;
  - (13) Hawaii hurricane relief fund established under chapter 431P;
  - (14) Convention center capital and operations special fund established under section 206X-10.5;
  - (15) Hawaii health systems corporation special funds;
  - (16) Tourism special fund established under section 201B-11;
  - (17) Compliance resolution fund established under section 26-9;
  - (18) Universal service fund established under chapter 269;
  - (19) Integrated tax information management systems special fund under section 231-3.2;
  - ~~[(20) Insurance regulation fund under section 431:2-215;~~
  - ~~[(21)] (20) Hawaii tobacco settlement special fund under section 328L-2;~~
  - ~~[(22)] (21) Emergency and budget reserve fund under section 328L-3;~~
  - ~~[(23)] (22) Probation services special fund under section 706-649;~~
  - ~~[(24)] (23) High technology special fund under section 206M-15.5;~~
  - ~~[(25)] (24) Public schools special fees and charges fund under section 302A-1130(f);~~
  - ~~[(26)] (25) Cigarette tax stamp enforcement special fund established by section 28-14;~~
  - ~~[(27)] (26) Cigarette tax stamp administrative special fund established by section 245-41.5; and~~
  - ~~[(28)] (27) Tobacco enforcement special fund established by section 28-15;~~
- shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Section 431:2-203, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The attorney general, corporation counsels, and county prosecuting attorneys, ~~[shall]~~ on behalf of the commissioner, ~~shall~~ bring an action in forfeiture against an insurer who violates any order or notice of such order issued by the commissioner. The notice shall be given to the insurer of the commissioner's intention to proceed under such order against the person who does not comply with the order issued. The order may contain this notice of intention to seek a forfeiture if the order is disobeyed. The forfeiture shall be in an amount that the court considers just, but may not exceed an amount of \$10,000 for each day that the violation continues after the commencement of the action until judgment is rendered. No forfeiture may be imposed under this subsection if at the time the forfeiture action is commenced, the insurer was in compliance with the order, or if the violation of the order occurred during the order suspension period. If, after a judgment is rendered, the insurer still does not comply with the order, the commissioner may commence a new action of forfeiture, and may continue commencing actions in forfeiture until the insurer complies. All proceeds from actions of forfeiture ~~[will]~~ shall be paid to

the director of finance and paid into the [insurance regulation] compliance resolution fund."

SECTION 5. Section 431:2-215, Hawaii Revised Statutes, is amended to read as follows:

**"§431:2-215 [Insurance regulation] Deposits to compliance resolution fund.** (a) ~~[There is established a special fund to be designated as the insurance regulation fund.]~~ All assessments, fees, fines, penalties, and reimbursements collected by or on behalf of the insurance division under title 24, except for the commissioner's education and training fund (section 431:2-214), the patients' compensation fund (Act 232, Session Laws of Hawaii 1984), the drivers education fund underwriters fee (section 431:10C-115), and the captive insurance administrative fund (section 431:19-101.8) to the extent provided by section 431:19-101.8(b), shall be deposited into the [insurance regulation fund. All sums transferred into the insurance regulation] compliance resolution fund under section 26-9(o). All sums transferred from the insurance division into the compliance resolution fund may be expended by the commissioner to carry out the commissioner's duties and obligations under title 24.

(b) ~~[The insurance regulation]~~ Sums from the compliance resolution fund expended by the commissioner shall be used to defray any administrative costs, including personnel costs, associated with the programs of the division, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys in the fund to employ or retain, by contract or otherwise, without regard to ~~[chapters]~~ chapter 76 ~~[and 77]~~, hearings officers, attorneys, investigators, accountants, examiners, and other necessary professional, technical, and support personnel to implement and carry out the purposes of title 24; provided that any position, except any attorney position, that is subject to ~~[[chapters]]~~ chapter 76 ~~[and 77]~~ prior to July 1, 1999, shall remain subject to ~~[chapters]~~ chapter 76 ~~[and 77]~~.

(c) Moneys deposited by the commissioner in the ~~[special]~~ fund shall not revert to the general fund.

(d) The commissioner shall determine the amount or amounts to be assessed and the time any moneys from assessments are due for each line or type of insurance or entity regulated under title 24; provided that:

- (1) The criteria for making the assessment shall be established by rule; provided further that the commissioner shall have provisional authority to make assessments prior to adoption of the rule but this provisional authority shall not extend beyond two years from June 28, 1999;
- (2) The insurers or entities under title 24 shall be provided reasonable notice of when their respective assessments are due;
- (3) The assessments by line or type shall bear a reasonable relationship to the costs of regulating the line or type of insurance, including any administrative costs of the division; and
- (4) The sum total of all assessments made and collected shall not exceed the special fund ceiling or ceilings related to the fund that are established by the legislature.

As used in this subsection, "reasonable notice" means a period of at least sixty days.

(e) The commissioner may suspend an assessment of any insurer if the commissioner determines that an insurer or entity may reach insolvency or other financial difficulty if the assessment is made against that insurer or entity.

~~[(f) The commissioner shall prepare an annual report to the director, governor, and the legislature of the use of the fund. The report shall describe assessments~~

by line or type of insurance, and expenditures made from the fund including non-payroll operating expenses. The report shall be submitted to the legislature no later than twenty days prior to the convening of each regular legislative session.]"

SECTION 6. Section 431:2-216, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Beginning with fiscal year 2000-2001, and including fiscal year 2001-2002, each mutual benefit society under article 1 of chapter 432, health maintenance organization under chapter 432D, and any other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A, shall deposit with the commissioner by July 1 of each year an assessment of \$10,000 for the first zero to seventy thousand private, nongovernment members the entity covers and an additional assessment on a pro rata basis to be determined and imposed by the commissioner for covered members exceeding seventy thousand; provided that in the third year and each year thereafter, assessments shall be borne on a pro rata basis. The aggregate annual assessment shall not exceed \$1,000,000. The assessment shall be credited to the [insurance regulation] compliance resolution fund. If assessments are increased, the commissioner shall provide to any organization or entity subject to the increased assessment, justification for the increase."

SECTION 7. Section 431:2-216, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Moneys credited to the [insurance regulation] compliance resolution fund that are not used for [health] insurance regulation [or], general administration purposes, or as otherwise allowed pursuant to section 26-9(o) shall not revert to the general fund nor shall be used for other purposes."

SECTION 8. Section 431:2-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The insurer, person, or guaranty fund examined and liable therefor shall pay to the commissioner's examiners upon presentation of an itemized statement, their actual travel expenses, their reasonable living expense allowance, and their per diem compensation at a reasonable rate approved by the commissioner, incurred on account of the examination. All payments collected by the commissioner shall be remitted to:

- (1) The [insurance regulation] compliance resolution fund; or
- (2) The captive insurance administrative fund if independent contractor examiners or captive staff examiners were employed for a captive insurer's examination.

The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination."

SECTION 9. Section 431:2-307.5, Hawaii Revised Statutes, is amended to read as follows:

**"§431:2-307.5 Reimbursement and compensation of examiners; source of funds; disposition of receipts.** (a) All moneys necessary for the compensation and reimbursement of independent contractor examiners and insurance division staff examiners for actual travel expenses, reasonable living expenses, and per diem expenses, at customary rates approved by the commissioner shall be allocated by the legislature through appropriations out of the state [insurance regulation] compliance resolution fund. The department shall include in its budgetary request for each

upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

~~[(b) Each authorized insurer shall deposit at a time determined by the commissioner the sum of \$200 with the commissioner for deposit into the state insurance regulation fund.~~

~~[(e)]~~ (b) All moneys, fees, and other payments received by the commissioner under this part shall be deposited to the credit of the state ~~[insurance regulation]~~ compliance resolution fund.

~~[(d) This section shall take effect upon the termination of the insurance examiners revolving fund on June 30, 2000.]”~~

SECTION 10. Section 431:3-221, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-221 Power to fine.** In addition to or in lieu of the suspension, revocation, or refusal to extend any certificate of authority, the commissioner ~~[may]~~, after hearing, may levy a fine upon the insurer in an amount not less than \$500 and not more than \$50,000. The order levying the fine shall specify the period within which the fine shall be fully paid, ~~[and]~~ which ~~[period]~~ shall not be less than thirty nor more than forty-five days from the date of the order. Upon failure to pay ~~[any such]~~ the fine when due, the commissioner shall revoke the insurer’s certificate of authority if not already revoked, and the fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the director of finance for the account of the ~~[insurance regulation]~~ compliance resolution fund.”

SECTION 11. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~“(d) All fees and penalties shall be deposited to the credit of the [insurance regulation] compliance resolution fund.”~~

SECTION 12. Section 431:7-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) [In the event]~~ If any person has paid to the commissioner any tax, fee, or other charge in error or in excess of that which the person is lawfully obligated to pay under this code, the commissioner, upon written request made by the person to the commissioner within the time set forth in section 431:7-204.6, shall authorize a refund thereof out of the ~~[insurance regulation]~~ compliance resolution fund, except that a tax refund shall be payable out of the general fund, by submitting a voucher therefor to the comptroller subject to the following limitations:

- (1) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the commissioner; provided that if the assessment by the commissioner contains clerical errors, transposition of figures, typographical errors, and errors in calculation or if there is an illegal or erroneous assessment because the assessment is not in accordance with this code, the refund procedures in subsection (a) shall apply; and
- (2) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied with respect to the taxpayer concerned differently than with respect to taxpayers generally.

As to all tax payments for which a refund or credit is not authorized by this subsection (including, without prejudice to the generality of the foregoing, cases of



unconstitutionality), the remedies provided by appeal or under section 40-35 are exclusive.”

SECTION 13. Section 431:9-238, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any fine collected shall be paid by the commissioner to the director of finance for the account of the ~~[insurance regulation]~~ compliance resolution fund.”

SECTION 14. Section 431:11-111, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any insurer failing without just cause to file any registration statement as required in this article[,] shall be liable for a fine in an amount of not less than \$100 and not more than \$500 for each day of delinquency, to be recovered by the commissioner, and the penalty so recovered shall be paid into the ~~[insurance regulation]~~ compliance resolution fund. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.”

SECTION 15. Section 431:15-334, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d)(1) Upon liquidation of a domestic nonlife mutual insurance company, any assets held in excess of its liabilities and the amounts which may be paid to its members as provided under subsection (d)(2) shall be paid into the state ~~[insurance regulation]~~ compliance resolution fund.
- (2) The maximum amount payable upon liquidation to any member for and on account of such member’s membership in a domestic nonlife mutual insurance company, in addition to the insurance benefits promised in the policy, is the total of all premium payments made by the member within the past five years with interest at the legal rate compounded annually.”

SECTION 16. Section 431:15-335, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All funds withheld under section 431:15-327 and not distributed, shall upon discharge of the liquidator be deposited with the ~~[insurance regulation]~~ compliance resolution fund and paid by the liquidator in accordance with section 431:15-332. Any sums remaining ~~[which]~~ that under section 431:15-332 would revert to the undistributed assets of the insurer shall be transferred to the ~~[insurance regulation]~~ compliance resolution fund and become the property of the State under subsection (a), unless the commissioner in the commissioner’s discretion petitions the court to reopen the liquidation under section 431:15-337.”

SECTION 17. Section 431:19-101.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All premium taxes collected from captive insurance companies licensed in this State under this article, all captive insurance company application fees, annual license fees, and examination fees collected pursuant to this article shall be credited to the captive insurance administrative fund. Each fiscal year, the commissioner shall transfer out of the fund and deposit into the ~~[insurance regulation]~~ compliance resolution fund a total of forty per cent of the total moneys credited to the fund in the prior fiscal year or \$250,000, whichever is greater, to pay for the expenditures contemplated by this section. In addition, each fiscal year, the commissioner shall transfer out of the fund and deposit into the ~~[insurance regulation]~~ compliance resolution fund up to ten per cent of the total moneys credited to the fund in the prior

fiscal year for purposes of promoting Hawaii as a captive insurance domicile. Disbursements for promotional activities from the ~~[insurance regulation]~~ compliance resolution fund shall be subject to the approval of the director of commerce and consumer affairs. Subject to the foregoing expenditure limits, all moneys remaining in the fund shall revert to the general fund.”

SECTION 18. Section 432E-11, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Every mutual benefit society, every health maintenance organization, and every other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A of chapter 431, shall deposit with the commissioner a fee to provide for the actual costs of the survey and educational program to be determined by the commissioner on July 1 of each year, to be credited to the ~~[insurance regulation]~~ compliance resolution fund. ~~[In addition, every mutual benefit society, every health maintenance organization, and every other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A of chapter 431, shall pay to the commissioner at a time to be determined by the commissioner, a one-time assessment in an amount to be determined by the commissioner, to be credited to the insurance regulation fund.]”~~

SECTION 19. Act 142, Session Laws of Hawaii 1998, as amended by Act 163, Session Laws of Hawaii 1999, is amended by amending section 9 to read as follows:

“SECTION 9. This Act shall take effect upon its approval and shall be repealed on July 31, 2003, except that section 3 of this Act shall not be repealed; provided that ~~[section]~~<sup>1</sup> sections 36-27 and 397-5(b), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act; and provided further that the amendments made to section 36-27, Hawaii Revised Statutes, by ~~[section 8 of Act 163, Session Laws of Hawaii 1999,]~~ section 2 of Act 39, Session Laws of Hawaii 2002, shall be retained.”

SECTION 20. The director of finance shall transfer and deposit all funds in the insurance regulation fund (section 431:2-215, Hawaii Revised Statutes) unencumbered as of the effective date of this Act into the compliance resolution fund. Any funds remaining in the insurance regulation fund on June 30, 2002, shall be transferred into the compliance resolution fund.

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 22. This Act shall take effect on July 1, 2002.

(Approved April 23, 2002.)

#### Note

1. Not stricken.

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners’ revolving fund, section 412:2-109, and the special handling fund, section [415-128;] 414-13, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers’ compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner’s education and training fund, section 431:2-214, the medical malpractice patients’ compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, ~~[the insurance examiners’ revolving fund, section 431:2-307, the motor vehicle insurance administration revolving fund, section 431:10C-115.5;]~~ and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section [444-29, and the public broadcasting revolving fund, section 314-13.] 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to ~~[chapters]~~ chapter 76 ~~[and 77]~~, hearings

officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department with the exception of costs related to the Hawaii public broadcasting authority. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, “compliance resolution” means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
  - (2) Any person subject to chapter 485 has complied with that chapter;
  - (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
  - (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
  - (5) Any person subject to chapter 467B has complied with that chapter;
- and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses.”

SECTION 2. Section 46-80.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition and supplemental to the authority vested in the counties by sections 46-80 and 46-80.1, any county having a charter may enact an ordinance, and may amend the same from time to time, authorizing the creation of special improvement districts for the purpose of providing and financing supplemental maintenance and security services and such other improvements, services, and facilities within the special improvement district as the council of the county determines will restore or promote business activity in the special improvement district and making and financing improvements therein. Each separate special improvement district shall be established by a separate ordinance enacted as provided in the ordinance authorizing the creation of special improvement districts. The ordinance authorizing the creation of special improvement districts may permit the county to provide for a board or association, established pursuant to chapter ~~[415B,]~~ 414D, to provide management of the special improvement district, and to carry out activities as may be prescribed by the ordinance authorizing the creation of special improvement districts and the ordinance establishing the special improvement district as permitted thereby.”

SECTION 3. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

**“§92-28 State service fees; increase or decrease of.** Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, [415,] 414, 414D, 421, 425, 425D, 428, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapters 304, 305, 306, and 308 shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;
- (3) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
- (4) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and
- (5) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5."

SECTION 4. Section 163D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The corporation may exercise its powers through one or more subsidiary corporations. The corporation, by resolution, may direct any of its members, officers, or employees to organize a subsidiary corporation pursuant to either chapter [415] 414 or chapter [415B,] 414D; provided that the organization of a subsidiary corporation shall not adversely affect the federal tax status of the interest on any bonds issued to finance any project or project facility. The resolution shall prescribe the purposes for which the subsidiary corporation is established. The subsidiary corporation shall remain a subsidiary of the corporation as long as more than one-half of its voting shares are owned or held by the corporation, or a majority of its directors are designated by the corporation; provided that the corporation shall not convey or otherwise dispose of any subsidiary corporation or surrender the right to designate a majority of the directors of any subsidiary corporation if the sale or surrender has an adverse affect on the federal tax status of the interest on any bonds issued to finance any project or project facility. The subsidiary corporation may be operated, maintained, and enhanced at the full discretion of the corporation or its designee."

SECTION 5. Section 207-12, Hawaii Revised Statutes, is amended to read as follows:

**"§207-12 Exemptions and immunities.** A foreign lender which (1) does not maintain a place of business in this State, (2) conducts its principal activities outside this State, and (3) complies with this part, does not by engaging in this State in any or all of the activities specified in section 207-13, violate the laws of this State relating to doing business or doing a banking, trust, or insurance business, or become subject to chapter 412, [415,] 414, or 431, or become subject to any taxation which would otherwise be imposed for doing business in or doing a banking, trust, or insurance business in, or having gross income or receipts from sources in, property in, or the conduct of any activity in, this State, or become subject to any taxation

under chapter 235, 237, or 241, and no income or receipts of any foreign lender arising out of any of the activities specified in the following section shall constitute income from sources in, property in, or activities conducted in this State for the purposes of any tax imposed by this State; provided that nothing in this part shall be construed to exempt the real property of a foreign lender from taxation to the same extent, according to its value, as other real property is taxed, or to preclude the inclusion of the dividends or other income from foreign lenders in the income of individuals taxable under chapter 235 to the same extent as is included dividends and other income from domestic lenders; and provided further that if any such foreign lender shall acquire any property in this State in enforcement of the rights of the foreign lender in the event of a default by any borrower, as permitted by section 207-13(4), then commencing one year after title to such property has vested in the foreign lender, the rents or other receipts received by the foreign lender from, and the proceeds of sale by the foreign lender of, such property shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if the rents, other receipts, or proceeds were received by a resident of this State; and provided further that if any such foreign lender shall otherwise acquire any property in this State or engage in any business or activities in this State not specified in section 207-13, then the rents and other receipts received by the foreign lender from such property and the proceeds of sale by the foreign lender of such property and all income and receipts from the foreign lender's business or activities in this State not specified in section 207-13 shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if such rents, other receipts, proceeds, and income were received by a resident of this State, but such other activities and business shall not deprive the foreign lender of the immunities and exemptions from taxation hereinabove stated with respect to the activities specified in section 207-13."

SECTION 6. Section 235-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As used in this section:

"Nonresident person" means every person other than a resident person.

"Property" or "real property" has the meaning as the same term is defined in section 231-1.

"Resident person" means any:

- (1) Individual included in the definition of resident in section 235-1;
- (2) Corporation incorporated or granted a certificate of authority under chapter [415,] 414, 414D, or 415A[~~-or 415B~~];
- (3) Partnership formed or registered under chapter 425 or 425D;
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or 425D;
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or
- (9) Estate included in the definition of resident estate in section 235-1.

"Transferee" means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

"Transferor" means any person disposing real property which is located in Hawaii."

SECTION 7. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

**“§237-24.3 Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms “agricultural commodity”, “producer”, and “produce dealer” shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (2) Amounts received from sales of:
  - (A) Intoxicating liquor as the term “liquor” is defined in chapter 244D;
  - (B) Cigarettes and tobacco products as defined in chapter 245; and
  - (C) Agricultural, meat, or fish products grown, raised, or caught in Hawaii, to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper’s vessels or airplanes;
- (3) Amounts received by the manager or board of directors of:
  - (A) An association of apartment owners of a condominium property regime established in accordance with chapter 514A; or
  - (B) A nonprofit homeowners or community association incorporated in accordance with chapter ~~[415B]~~ 414D or any predecessor thereto and existing pursuant to covenants running with the land, in reimbursement of sums paid for common expenses;
- (4) Amounts received or accrued from:
  - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
  - (B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
  - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;
- (5) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, “employee benefit plan” means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;

- (6) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- (7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:
  - (A) "Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and
  - (B) "Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;
- (8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;
- (9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;
- (10) Amounts received by a labor organization for real property leased to:
  - (A) A labor organization; or
  - (B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.

As used in this paragraph, "labor organization" means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;
- (11) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes; and
- (12) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102."



SECTION 8. Section 238-1, Hawaii Revised Statutes, is amended by amending the definition of “representation” to read as follows:

““Representation” refers to any or all of the following:

- (1) A seller being present in the State;
- (2) A seller having in the State a salesperson, commission agent, manufacturer’s representative, broker, or other person who is authorized or employed by the seller to assist the seller in selling property, services, or contracting for use or consumption in the State, by procuring orders for the sales, making collections or deliveries, or otherwise; and
- (3) A seller having in the State a person upon whom process directed to the seller from the courts of the State may be served, including the director of commerce and consumer affairs and the deputy director in the cases provided in section [415-14.] 414-64.”

SECTION 9. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

**“§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner’s interest in the property after partition is equal in value to that owner’s interest before partition;

- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter [415,] 414, 414D, 415A, [415B,] 421, 421C, 425, 425D, or 428 to the surviving or new entity; and
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership."

SECTION 10. Section 323D-76, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~323D-76] Acquisition in the public interest; decision of attorney general.** If the attorney general determines that a review of the application is appropriate, the attorney general shall approve the application unless the attorney general finds that the acquisition is not in the public interest. An acquisition of a private nonprofit hospital is not in the public interest unless appropriate steps have been taken to safeguard the value of charitable assets and ensure that any proceeds of the transaction are used for appropriate charitable health care purposes as provided in paragraph (8). In determining whether the acquisition meets such criteria, the attorney general shall consider, as applicable:

- (1) Whether the acquisition is permitted under chapter [415B] 414D governing nonprofit entities, trusts, or charities;
- (2) Whether the hospital acted in a duly diligent manner in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;
- (3) The procedures used by the seller in making its decision, including whether appropriate expert assistance was used;
- (4) Whether all conflicts of interest were disclosed, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the seller, purchaser, or parties to the acquisition;
- (5) Whether the seller will receive reasonably fair value for its assets. The attorney general may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;
- (6) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;
- (7) Whether any management contract under the acquisition is for reasonably fair value;
- (8) Whether the sale proceeds will be used for appropriate charitable health care purposes consistent with the seller's original purpose or for the

- support and promotion of health care in the affected community, and will be controlled as charitable funds independent of the purchaser or parties to the acquisition; and
- (9) Whether a right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained, if the hospital is subsequently sold to, acquired by, or merged with another entity.”

SECTION 11. Section 412:1-105, Hawaii Revised Statutes, is amended to read as follows:

**“§412:1-105 Deposits.** Except as expressly authorized by this chapter[; section ~~415-106(e)~~], or by federal law, no person shall solicit, accept, or hold deposits in this State.”

SECTION 12. Section 412:2-508, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may issue a provisional approval to organize a new corporation pursuant to this chapter and chapter ~~[415]~~ 414 solely for the purpose of merging with or acquiring the stock or assets and assuming the liabilities of a failing financial institution in a transaction meeting the requirements of this part and other applicable law.”

SECTION 13. Section 412:3-101, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-101 Name of financial institution.** The name of every Hawaii financial institution shall be subject to the approval of the commissioner and shall conform with the provisions of section ~~[415-8(2)]~~ 414-51 or any successor thereto, whether or not the Hawaii financial institution is a corporation. If the Hawaii financial institution is incorporated, its name may, but need not, contain the word “corporation”, “incorporated”, or “limited”, or an abbreviation of one of the words.”

SECTION 14. Section 412:3-102, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-102 Change of name.** To change its name, a Hawaii financial institution shall file an application with the commissioner and pay such fees as the commissioner may establish. The application shall be approved if the commissioner is satisfied that the new name complies with this chapter and chapter ~~[415-]~~ 414. Any change of name of a stock financial institution or mutual savings and loan association pursuant to this section shall be effected in accordance with chapter ~~[415-]~~ 414. Any change of name shall not affect a financial institution’s rights, liabilities, or obligations existing prior to the effective date thereof, and no documents of transfer shall be necessary to preserve such rights, liabilities, or obligations; provided[; however,] that the commissioner may require notice to be given to the public and other governmental agencies.”

SECTION 15. Section 412:3-208, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The articles of incorporation shall comply in all respects with chapter ~~[415-]~~ 414.”

SECTION 16. Section 412:3-304, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the commissioner is satisfied that the applicant has fulfilled all the requirements of law and is qualified to engage in the business of a nondepository financial services loan company, the commissioner shall issue a written decision and order approving the application. Upon the approval of the application, the payment of an initial license fee established by rule pursuant to chapter 91, and, if applicable, upon providing satisfactory evidence to the commissioner of compliance with the requirements of chapter ~~[415]~~ 414 relating to foreign corporations, the commissioner shall issue to the applicant a license to engage in the business of a nondepository financial services loan company under this chapter.”

SECTION 17. Section 412:3-401, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-401 Applicability of Hawaii Business Corporation Act.** (a) Except to the extent that the provisions of this chapter are inconsistent, all provisions of chapter ~~[415]~~ 414 shall apply to a corporation engaging in business as a Hawaii financial institution under this chapter. In case of any inconsistencies, the provisions of this chapter shall control.

(b) A copy of each document delivered to the director of commerce and consumer affairs for filing pursuant to chapter ~~[415]~~ 414 shall be simultaneously delivered to the commissioner.”

SECTION 18. Section 412:3-402, Hawaii Revised Statutes, is amended to read as follows:

**“§412:3-402 Capital stock.** The following provisions shall apply to all shares of capital stock of a Hawaii stock financial institution:

- (1) Subject to any restrictions in chapter ~~[415]~~ 414 or the articles of incorporation, the consideration to be paid for the issuance of authorized capital stock of a Hawaii stock financial institution shall be authorized by the board of directors of the financial institution and shall be paid only in money or such other consideration as may be authorized by chapter ~~[415]~~ 414 or this chapter, but not in labor or services actually performed for the financial institution; provided that upon authorization by the board of directors, the financial institution may issue its own authorized shares of capital stock in exchange for or in conversion of its outstanding shares, or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate stock dividends or splits, and any such transaction shall not require consideration; provided~~[;]~~ further~~[;]~~ that no such issuance of shares of any class or series shall be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation, or is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which a distribution is to be made.
- (2) No Hawaii financial institution shall issue any share of its capital stock unless and until the full amount of any consideration therefor as authorized by the board of directors shall have been paid into or received by the financial institution.
- (3) No Hawaii stock financial institution other than a nondepository financial services loan company shall issue preferred stock without first

obtaining the written approval of the commissioner as to the amount and terms thereof. While any preferred stock of a financial institution is held as owner or pledgee by any federal agency or entity established by law for the purpose of providing financial assistance to financial institutions, such preferred stock and any dividends paid thereon shall be exempt from taxation by this State.

- (4) No Hawaii stock financial institution other than a nondepository financial services loan company shall decrease its authorized capital stock or the par value of capital stock having par value, or decrease its outstanding capital stock by the acquisition of its own shares, without first receiving the written approval of the commissioner."

SECTION 19. Section 412:3-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No Hawaii stock financial institution shall declare or pay any dividends or make any other capital distribution to its shareholders except pursuant to its articles of incorporation, this section, and section ~~[415-45]~~ 414-111; provided that if section ~~[415-45]~~ 414-111 is inconsistent with this section, the provisions of this section shall control."

SECTION 20. Section 412:3-604, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This section shall control over the required percentages for any shareholder vote contained in section ~~[415-73]~~ 414-313 on approval by shareholders of a merger or consolidation, section ~~[415-79]~~ 414-332 on approval by shareholders on the sale of assets not in the usual and regular course of business, and section ~~[415-84]~~ 414-382 on approval by shareholders on the voluntary dissolution of a corporation."

SECTION 21. Section 412:3-605, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A member of a mutual savings and loan association or credit union shall have no right of dissent under chapter ~~[415]~~ 414 for any of the transactions governed by this part."

SECTION 22. Section 412:3-606, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Upon the effective date of the conversion as determined under federal law, the institution's state charter or license shall terminate without further notice, and the institution shall cease to be regulated by the commissioner. Within ten days after receipt of the federal charter, license, certificate, or other approval, the resulting financial institution shall deliver a copy thereof to the commissioner. The resulting financial institution shall also file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the conversion, together with the appropriate filing fee pursuant to chapter ~~[415-]~~ 414."

SECTION 23. Section 412:3-607, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The charter shall be granted only if the commissioner is satisfied that the granting of the charter will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, the charac-

ter of its executive officers and directors, and compliance with all applicable provisions of chapter ~~[415:]~~ 414. The director of commerce and consumer affairs shall not file the articles of incorporation until the application for a charter to engage in business as a Hawaii financial institution shall have been approved by the commissioner in writing. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.”

SECTION 24. Section 412:3-608, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

“(e) The charter or license shall be granted only if the commissioner is satisfied that the granting of the charter or license will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, the character of its executive officers and directors and compliance with all applicable provisions of chapter ~~[415:]~~ 414. If the resulting Hawaii financial institution is a new corporation to be formed under chapter ~~[415:]~~ 414, the director of commerce and consumer affairs shall not file the articles of incorporation until the application for a charter to engage in the business of the type of financial institution to which it will convert shall have been approved by the commissioner in writing. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(f) If the resulting Hawaii financial institution is an existing corporation formed under chapter ~~[415:]~~ 414, the conversion shall be effective upon the effective date of the new charter or license granted by the commissioner after all provisions of this section and of federal law shall have been complied with in full. If the resulting Hawaii financial institution is a new corporation to be formed under chapter ~~[415:]~~ 414, the effective date of the new charter or license shall be the date of filing of the articles of incorporation by the director of commerce and consumer affairs.”

SECTION 25. Section 412:3-609, Hawaii Revised Statutes, is amended by amending subsections (b) to (f) to read as follows:

“(b) Any merger or consolidation of Hawaii stock financial institutions shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more corporations pursuant to chapter ~~[415:]~~ 414; except that the vote by the shareholders of each of the participating institutions to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604 and that the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing.

(c) One or more federal financial institutions whose operations are conducted principally in this State and one or more Hawaii financial institutions may be merged or consolidated, with the federal financial institution, the Hawaii financial institution, or a new consolidated financial institution being the resulting institution, if the merger or consolidation is permitted by federal law. The federal financial institution shall comply with all requirements, conditions, and limitations imposed by federal law or regulation with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter ~~[415:]~~ 414, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604. The resulting financial institution shall file with the

director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter ~~[415:]~~ 414.

(d) One or more financial institutions chartered or licensed under the laws of or whose operations are conducted principally in any state other than this State, in any possession or territory of the United States, or in any foreign country and one or more Hawaii depository financial institutions or trust companies may be merged or consolidated, but only where the depository financial institution or trust company resulting from any merger or consolidation pursuant to this subsection is chartered or licensed under the laws of and conducts its operations principally in this State, is a federal financial institution that conducts its operations principally in this State, or is an out-of-state bank authorized to establish interstate branches in this State pursuant to section 412:12-104. A nondepository financial services loan company licensed pursuant to article 9 may be merged or consolidated with another corporation, but only where the nondepository financial institution resulting from any merger or consolidation is licensed under the laws of this State. The financial institution chartered or licensed under the laws of any state other than this State, any possession or territory of the United States, or any foreign country shall comply with all requirements, conditions, and limitations imposed by the law of the jurisdiction under which the financial institution is chartered or licensed with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter ~~[415:]~~ 414, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing and the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter ~~[415:]~~ 414.

(e) A Hawaii mutual savings and loan association may merge into a Hawaii stock financial institution or a federal financial institution whose operations are principally conducted in this State, or may consolidate with a Hawaii stock financial institution or a federal financial institution whose operations are conducted principally in this State into a new resulting institution; provided that the resulting institution shall be a Hawaii stock financial institution or a federal financial institution, and shall not be a Hawaii mutual savings and loan association. The merger or consolidation shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more stock financial institutions pursuant to this section and to chapter ~~[415:]~~ 414, as though the Hawaii mutual savings and loan association was a stock financial institution; except that the members of the participating Hawaii mutual savings and loan association shall approve the plan of merger or consolidation at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time

of the merger or consolidation, together with the appropriate filing fee pursuant to chapter [415-] 414.

(f) A Hawaii credit union may merge with a Hawaii credit union or federal credit union. The merger shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger of two or more stock financial institutions pursuant to this section and to chapter [415-] 414, as though the credit unions were stock financial institutions; except that the plan of merger shall be approved by a majority of the members of the board of directors of each participating credit union and by the members of the participating credit unions at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605.”

SECTION 26. Section 412:3-610, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Except to the extent inconsistent with this part or in contravention of federal law, [section 415-76] sections 414-315(b) and 414-316 shall be applicable to any merger or consolidation under this part.”

SECTION 27. Section 412:3-613, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Whenever the transferring financial institution is a Hawaii financial institution, the sale or other disposition of its assets or business or the transfer of its deposits or liabilities subject to this section shall be effected pursuant to the procedures, conditions, and requirements of chapter [445] 414 applicable to the sale of assets other than in the regular course of business; provided that the sale or assumption shall be approved by the shareholders or members of the transferring Hawaii financial institution at a meeting duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604. Notwithstanding the foregoing, the approval of the shareholders or members of the transferring institution shall not be required if the acquisition of all or substantially all of the assets or business, or the assumption of liabilities or deposits, of any of the transferring financial institution’s departments or branches does not constitute an acquisition of all or substantially all of the assets or business, or assumption of all or substantially all of the liabilities or deposits, of the transferring financial institution.”

SECTION 28. Section 412:3-617, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except for a credit union, a solvent Hawaii financial institution whose capital is not impaired and which has not received a notice of charges and proposed suspension or revocation order pursuant to section 412:2-312 may cease its business and dissolve if the institution shall have complied with applicable federal law and the following requirements and conditions:

- (1) The board of directors shall adopt a resolution adopting a plan of liquidation and dissolution and recommending that the financial institution be dissolved, and directing that the question of the dissolution be submitted to the commissioner for approval, and, if approved, to a vote of the shareholders or members, which vote may be at either an annual or special meeting. The plan of liquidation and dissolution shall include, but not be limited to, provisions for the orderly payment or assumption of the institution’s deposits and other liabilities and for transfer or assumption of all trust, agency, and other fiduciary relationships and accounts;
- (2) Within five business days after the meeting of the board of directors described in paragraph (1) [of this subsection], the financial institution



shall file an application with the commissioner pursuant to section 412:3-603 for approval to cease business and dissolve. The application shall be accompanied by a copy of the plan of liquidation and dissolution certified by two executive officers of the financial institution to have been duly adopted by the board and any other information that the commissioner may require. A copy of the notice shall be delivered contemporaneously to the financial institution's federal insurer;

- (3) The commissioner shall approve the application to cease business and dissolve if the commissioner is satisfied that the depositors, beneficiaries, and creditors will be adequately protected under the plan, the institution is not insolvent or in danger of becoming insolvent, that its capital is not impaired and is not in danger of becoming impaired, and that no other reason exists to deny the application. The commissioner may impose any restrictions and conditions as the commissioner deems appropriate;
- (4) Upon receipt of the commissioner's approval to cease business and dissolve, the financial institution shall proceed with the dissolution in accordance with the procedures, conditions, and requirements for, and with the effect of, a voluntary dissolution by act of corporation pursuant to chapter [415,] 414, except that the vote by shareholders or members to approve the dissolution shall satisfy the requirements of section 412:3-604; and
- (5) Any financial institution whose capital is impaired or in danger of becoming impaired, and any institution which is insolvent or in danger of becoming insolvent, may not undergo a voluntary dissolution."

SECTION 29. Section 412:5-101, Hawaii Revised Statutes, is amended to read as follows:

**"§412:5-101 Necessity for bank charter.** Except as expressly permitted by federal law or this chapter [~~or section 415-106(e)~~], no person shall engage in any activity for which a charter to operate as a bank is required by this chapter, including without limitation the solicitation, acceptance, and holding of deposits in the State, the use of the term "bank", or the exercise of such other powers or privileges restricted to banks under applicable law unless it is a corporation incorporated in this State and has such a charter."

SECTION 30. Section 412:6-101, Hawaii Revised Statutes, is amended to read as follows:

**"§412:6-101 Necessity for savings bank charter.** Except as expressly permitted by federal law or this chapter [~~or section 415-106(e)~~], no person shall engage in any activity for which a charter to operate as a savings bank is required by this chapter, including without limitation the solicitation, acceptance, and holding of deposits in this State, the use of the term "savings bank," or the exercise of such other powers or privileges restricted to savings banks under applicable law, unless it is a corporation incorporated in this State and has such a savings bank charter."

SECTION 31. Section 412:7-101, Hawaii Revised Statutes, is amended to read as follows:

**"§412:7-101 Necessity for savings and loan association charter.** Except as expressly permitted by federal law or this chapter [~~or section 415-106(e)~~], no person shall engage in any activity for which a charter to operate as a savings and

loan association is required by this chapter, including without limitation the solicitation, acceptance, and holding of deposits in this State, the use of the term “savings and loan association,” or the exercise of such other powers or privileges restricted to savings and loan associations under applicable law, unless it is a corporation incorporated in this State and has such a charter.”

SECTION 32. Section 412:9-101, Hawaii Revised Statutes, is amended to read as follows:

**“§412:9-101 Necessity for financial services loan company license.** Except as expressly permitted by federal law or this chapter [~~or section 415-106(e)~~], no person shall engage in any activity for which a license to operate as a financial services loan company is required by this chapter, including without limitation, making loans and extensions of credit where the interest charged, contracted for, or received is in excess of rates permitted by law other than this article, the use of the term “financial services loan company”, or the exercise of such other powers or privileges restricted to financial services loan companies under applicable law unless it is a corporation incorporated in this State and has such a license; provided that a nondepository financial services loan company shall not be required to be incorporated in this State.”

SECTION 33. Section 412:10-101, Hawaii Revised Statutes, is amended to read as follows:

**“§412:10-101 Necessity for credit union charter.** Except as expressly permitted by federal law or this chapter [~~or section 415-106(e)~~], no person shall engage in the business of a credit union, represent itself as a credit union, use a name or title containing the phrase “credit union” or any derivation thereof, or control any other person engaging in the business of a credit union.”

SECTION 34. Section 412:12-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any out-of-state state bank which shall be the resulting bank in an interstate merger transaction involving a Hawaii bank shall confirm in writing to the commissioner that as long as it maintains a branch in this State, it shall comply with all applicable laws of this State and provide satisfactory evidence to the commissioner of compliance with applicable requirements of chapter [415] 414 relating to foreign corporations.”

SECTION 35. Section 412:12-105, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) No branch of an out-of-state bank may be established or acquired in this State under this section, unless:

- (1) The out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in this State, it shall comply with all applicable laws of this State;
- (2) The applicant provides to the commissioner satisfactory evidence of compliance with the applicable requirements of chapter [415] 414 relating to foreign corporations; and
- (3) The commissioner, acting within thirty days after receiving notice of an application under subsection (c), certifies to the responsible federal bank supervisory agency that the requirements of this article have been met.”

SECTION 36. Section 412:13-202, Hawaii Revised Statutes, is amended to read as follows:

**“§412:13-202 Application to establish and maintain a branch or agency; contents.** A foreign bank, in order to procure a license under this article to establish and maintain a Hawaii state branch or Hawaii state agency, shall submit an application to the commissioner, together with the application fee prescribed in section 412:13-206. The application shall contain:

- (1) The same information as required by the Board of Governors of the Federal Reserve System for an application to establish a branch or agency, as the case may be, in the United States;
- (2) If applicable, a statement under oath appointing an agent in this State for receipt of service of process in accordance with section [415-413,] 414-437, if the license is granted; and
- (3) Any additional information that the commissioner may require.”

SECTION 37. Section 412:13-203, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii state branch or Hawaii state agency, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the requirements of chapter [415] 414 relating to foreign corporations, if applicable. The commissioner shall then issue a license to establish and maintain a Hawaii state branch or Hawaii state agency to the foreign bank.”

SECTION 38. Section 412:13-216, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An application to establish and maintain a Hawaii representative office shall include, if applicable, a statement under oath appointing an agent in this State for receipt of service of process in accordance with section [415-413,] 414-437, if the license is granted.”

SECTION 39. Section 412:13-217, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii representative office, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the requirements of chapter [415] 414 relating to foreign corporations, if applicable. The commissioner shall then issue a license to establish and maintain a Hawaii representative office to the foreign bank.”

SECTION 40. Section 414-53, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
  - (A) Require the entity to register a new trade name with the department director; and
  - (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;  
 (B) Require the entity to register the new name with the department director; and

- (C) Require the entity to conduct business in this State under its new name.

If the entity fails to comply with the order of abatement within sixty days, the department director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority; after the time to appeal has lapsed and no appeal has been timely filed. The department director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapter 414D, 415A, ~~[415B;]~~ 425, 425D, or 428, as applicable."

SECTION 41. Section 414D-63, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 414D-276, if the name is distinguishable upon the records of the department director from:

- (1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this State; the name of a limited partnership or limited liability partnership existing under the laws of this State or authorized to transact business in this State; and
- (2) A corporate name reserved under section 414D-62 or ~~[415-9;]~~ 414-52, or registered under this section."

SECTION 42. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of "professional service" to read as follows:

"'Professional service' means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 457, 459, 460, 461, 463E, 465, 466, 471, 605, and section 554-2 and may not lawfully be rendered by a corporation organized under ~~[the Hawaii Business Corporation Act,]~~ chapter ~~[415-]~~ 414."

SECTION 43. Section 415A-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A professional corporation may be incorporated for the purpose of rendering professional services within two or more professions, and for any purpose or purposes for which corporations may be organized under ~~[the Hawaii Business Corporation Act,]~~ chapter ~~[415;]~~ 414, to the extent that any combination of professional purposes or of professional and business purposes is permitted by the licensing laws and rules of this State applicable to the professions."

SECTION 44. Section 415A-5, Hawaii Revised Statutes, is amended to read as follows:

**"§415A-5 General powers.** A professional corporation shall have the powers enumerated in ~~[the Hawaii Business Corporation Act,]~~ chapter ~~[415;]~~ 414, except that a professional corporation may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the corporation's articles of incorporation."

SECTION 45. Section 415A-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:

- (A) Require the entity to register a new trade name with the director; and
- (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;
- (B) Require the entity to register the new name with the director; and
- (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter [415-] 414, 414D, 415A, [415B,] 425, 425D, or 428, as applicable."

SECTION 46. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The articles of incorporation may set forth any of the matters specified in section [415-54(e).] 414-32(b).

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter or chapter [415-] 414."

SECTION 47. Section 415A-14.7, Hawaii Revised Statutes, is amended to read as follows:

**"[E]§415A-14.7[H] Filing of documents, effective date.** The filing of documents required by this chapter to be delivered to the director for filing, and the effectiveness thereof, shall be governed by [section 415-55-] sections 414-11(d), (e), (f), (g), and (i), 414-14, and 414-16."

SECTION 48. Section 415A-14.8, Hawaii Revised Statutes, is amended to read as follows:

**"§415A-14.8 Organization of corporation.** After incorporation, the initial director or directors, as the case may be, shall complete the organization of the corporation as provided in section [415-57-] 414-35."

SECTION 49. Section 415A-16.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A professional corporation may adopt a plan of conversion and convert to any other entity if:

- (1) The board of directors and shareholders of the professional corporation approve a plan of conversion in the manner prescribed by section [415-73] 414-313 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each shareholder of the converting entity, unless otherwise agreed to by that shareholder, owns an equity interest or other ownership interest in, and is a shareholder,

- partner, member, owner, or other security holder of, the converted entity;
- (4) The shareholders of the professional corporation, as a result of the conversion, shall not become personally liable without the shareholders' consent, for the liabilities or obligations of the converted entity; and
  - (5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion."

SECTION 50. Section 415A-17, Hawaii Revised Statutes, is amended to read as follows:

**"§415A-17 Termination of professional activities.** If a professional corporation shall cease to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of [~~the Hawaii Business Corporation Act,~~] chapter [~~415;~~] 414. After the amended articles of incorporation have been delivered to the director for filing, the corporation then may continue in existence as a corporation under [~~the Hawaii Business Corporation Act,~~] chapter [~~415;~~] 414, and shall no longer be subject to this chapter."

SECTION 51. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Whenever it is established that a professional corporation has failed to comply with any provision of this chapter, the director may declare the corporation dissolved.

Before the director may declare a corporation dissolved, the director shall give notice of the ground or grounds for dissolution as provided in section [~~415-94~~] 414-401 by mailing the notice to the professional corporation at its last known address appearing in the records of the director, and may give public notice of the intention to dissolve the corporation.

(b) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any professional corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section [~~415-135;~~] 414-473. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved professional corporation with full powers to settle its affairs."

SECTION 52. Section 415A-27, Hawaii Revised Statutes, is amended to read as follows:

**"§415A-27 Application of business corporation act.** The provisions of [~~the Hawaii Business Corporation Act,~~] chapter [~~415;~~] 414, shall apply to professional corporations, except to the extent that the provisions are inconsistent with this chapter."

SECTION 53. Section 419-2, Hawaii Revised Statutes, is amended to read as follows:

**"§419-2 Articles of incorporation; contents.** (a) Articles of incorporation under this chapter shall be delivered to the director for filing, certified and executed

by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole and shall set forth:

- (1) The name of the corporation;
- (2) The name and address of the officer forming the corporation, the office which the officer holds in the church, and that the officer is duly authorized by the rules, regulations, or discipline of the church to take the action;
- (3) The boundaries of the district subject to the ecclesiastical jurisdiction of the officer forming the corporation sole, in accordance with the rules, regulations, or discipline of the church;
- (4) The place of the principal office of the corporation sole, which shall be in the State;
- (5) The term for which the corporation sole is organized, which may be perpetual;
- (6) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole is required to be filled by the rules, regulations, or constitution of the church;
- (7) Additional powers to be set forth in its articles, in accordance with section [415B-5;] 414D-52;
- (8) Any lawful provision for the regulation of the affairs of the corporation sole, including restrictions upon the power to amend all or any part of the articles; and
- (9) That the corporation is not organized for profit.

(b) If any articles of incorporation presented to the director under this chapter are not in conformity with the requirements of this section the director shall return the same to the incorporator specifying wherein the same fails to conform with this section and the incorporator may amend the articles and present them so amended. If the articles of incorporation are in conformity with law, the director shall file the articles of incorporation."

SECTION 54. Section 419-3, Hawaii Revised Statutes, is amended to read as follows:

**"§419-3 Powers of corporation sole.** (a) Every corporation sole formed under this chapter shall have the powers set forth in section [415B-5;] 414D-52.

(b) Every such corporation shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, shall have the same capacity and right to receive and take any gift, bequest, devise, or conveyance of property, either as grantee for its own use, or as a trustee (where the trusteeship is within its corporate purposes and subject to removal from such trusteeship as provided by law), and to be or be made the beneficiary of a trust, as though there were no vacancies.

(c) No agency created by a corporation sole by a written instrument which, in express terms, provides that the agency thereby created shall not be terminated by a vacancy in the incumbency of the corporation, shall be terminated or affected by the death of the incumbent of the corporation or by a vacancy in the incumbency thereof, however caused."

SECTION 55. Section 419-8, Hawaii Revised Statutes, is amended to read as follows:

**"§419-8 Dissolution.** A corporation formed under this chapter may be dissolved, voluntarily or involuntarily, in the manner provided in [part V of chapter

~~415B~~ denominated “~~dissolution, liquidation, and sale of assets,~~” save] part XIII of chapter 414D; provided that:

- (1) In lieu of the certificate and vote therein required for a voluntary dissolution, the incumbent of the corporation sole shall execute, subscribe, and verify a declaration of dissolution which shall set forth the name of the corporation, the reason for its dissolution or winding up, and that the dissolution has been duly authorized by the church, to administer the affairs, property, and temporalities of which the corporation was organized, and the director of commerce and consumer affairs shall be satisfied that the dissolution has been duly authorized[-];
- (2) In lieu of the certificate of an officer, director, or manager of the corporation, therein required for the involuntary dissolution of a corporation which has ceased to have any assets and has failed to function, the certificate may be made by any authorized officer of the church, to administer the affairs, property, and temporalities of which the corporation was organized[-];
- (3) In lieu of the directors or managers of the corporation the incumbent shall be a trustee to wind up the corporation, unless some other person or persons are appointed as therein provided[-];
- (4) The church, to administer the affairs, property, and temporalities of which the corporation was organized, shall stand in the place and stead of the stockholders, and may be represented in court by any authorized officer thereof or trustee acting in its behalf; the remaining assets shall be distributed to such church or to a trustee or trustees in its behalf, or in such other manner as may be decreed by the circuit court of the judicial circuit in which the dissolved corporation had its principal office at the date of dissolution; and the trustee or trustees in dissolution, the director, the attorney general, or any person connected with the church, may file a petition for the determination of the manner of distribution of the remaining assets, or for the appointment of a trustee or trustees to act in behalf of the church[-]; and
- (5) In lieu of the officers of the corporation the incumbent shall represent the corporation with respect to the required tax clearance.”

SECTION 56. Section 421-5, Hawaii Revised Statutes, is amended to read as follows:

“**§421-5 Name.** Section [~~415B-7~~] 414D-6] shall apply to associations formed under this chapter and no domestic corporation not organized under this chapter shall use the word “cooperative” as a part of its name.”

SECTION 57. Section 421-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) An association organized under this chapter shall be subject to chapter [415] 414 relating to the payment of fees by corporations to the director.”

SECTION 58. Section 421-21, Hawaii Revised Statutes, is amended to read as follows:

“**§421-21 Voluntary dissolution.** Chapter [415;] 414, relating to the voluntary dissolution of [~~stock~~] profit corporations, and chapter [~~415B;~~] 414D, relating to the voluntary dissolution of [~~nonstock~~] nonprofit corporations, shall apply, as the case may be, to associations formed under this chapter except that the dissolution



shall be approved at a meeting duly called and held for the purpose by not less than two-thirds of the voting power voting thereon.”

SECTION 59. Section 421H-1, Hawaii Revised Statutes, is amended by amending the definition of “limited-equity housing cooperative” to read as follows:

““Limited-equity housing cooperative” means a stock cooperative corporation which is organized as a nonprofit corporation under chapter [415B] 414D for the purpose of holding title to, either in fee simple or for a term of years, improved real property, if all or substantially all of the shareholders of such corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation, which right of occupancy is transferable only concurrently with the transfer of the share or shares of stock in the corporation held by the person having such right of occupancy; provided the corporation also:

- (1) Is organized so that the consideration paid for an individual membership share by the first occupant following construction or acquisition by the corporation, including the principal amount of obligation incurred to finance the membership share, does not exceed seven per cent of the respective dwelling unit’s development cost, acquisition cost, or of the fair market value appraisal by the permanent lender, whichever is greater; and
- (2) Holds title to real property as the beneficiary of a trust providing for distribution for public or charitable purposes upon termination of the trust; or
- (3) Holds title to real property subject to conditions which will result in reversion to a public or charitable entity for affordable housing upon dissolution of the corporation; or
- (4) Holds a leasehold interest conditioned on the corporation’s continued qualification under this chapter and providing for reversion to a public entity or charitable corporation for affordable housing.”

SECTION 60. Section 421I-11, Hawaii Revised Statutes, is amended to read as follows:

“[§421I-11] **Application of Hawaii business corporation act.** The provisions of the Hawaii Business Corporation Act, chapter [415:] 414, shall apply to cooperative housing corporations, except to the extent that the provisions of chapter [415] 414 are inconsistent with this chapter.”

SECTION 61. Section 423-1, Hawaii Revised Statutes, is amended to read as follows:

“**§423-1 Dental service corporation, formation.** A nonprofit dental service corporation may be formed for the purposes of contracting with individuals and corporations, both public and private, for defraying or assuming the costs of services of dentists and dental surgeons, and the contracting on behalf of dentists and dental surgeons to furnish such services. The director of commerce and consumer affairs shall grant to applicants who file articles of incorporation in conformity with section [415B-34] 414D-32 a charter of incorporation for the establishment and conduct of a dental service corporation; provided that the corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

- (1) [Fifty] At least fifty licensed dentists and dental surgeons in this State have become members of the corporation;

- (2) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all licensed dentists and dental surgeons in this State;
- (3) Voting by proxy and cumulative voting are prohibited; and
- (4) [Certificate] A certificate of compliance with the requirements of paragraphs (1), (2), and (3) has been issued to the corporation by the board of dental examiners.

Any charter granted or corporation created under authority of this section shall be subject to all general laws enacted in regard to nonprofit corporations.”

SECTION 62. Section 424-1, Hawaii Revised Statutes, is amended to read as follows:

“**§424-1 General provisions.** A nonprofit optometric service corporation may be formed for the purposes of contracting with individuals and corporations, both public and private, for defraying or assuming the costs of services of optometrists, and the contracting on behalf of optometrists to furnish such services. The director of commerce and consumer affairs shall grant to applicants who file articles of incorporation in conformity with section [415B-34] 414D-32 a charter of incorporation for the establishment and conduct of an optometric service corporation; provided that the corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

- (1) At least twenty-five per cent of all licensed optometrists in this State have become members of the corporation;
- (2) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all licensed optometrists in this State;
- (3) Voting by proxy and cumulative voting are prohibited; and
- (4) [Certificate] A certificate of compliance with the requirements of paragraphs (1), (2), and (3) has been issued to the corporation by the board of examiners in optometry.

Any charter granted or corporation created under authority of this section shall be subject to all general laws enacted in regard to nonprofit corporations.”

SECTION 63. Section 425-196, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
  - (A) Require the entity to register a new trade name with the director; and
  - (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;
  - (B) Require the entity to register the new name with the director; and
  - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity

shall wind up its affairs in accordance with chapter [415,] 414, 414D, 415A, [415B,] 425, 425D, or 428, as applicable.”

SECTION 64. Section 425D-102.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
  - (A) Require the entity to register a new trade name with the director; and
  - (B) Require the entity to conduct business in this State under this new trade name; or
- (2)
  - (A) Require the entity to change its registered name;
  - (B) Require the entity to register the new name with the director; and
  - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter [415,] 414, 414D, 415A, [415B,] 425, 425D, or 428, as applicable.”

SECTION 65. Section 428-105.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
  - (A) Require the entity to register a new trade name with the director; and
  - (B) Require the entity to conduct business in this State under this new trade name; or
- (2)
  - (A) Require the entity to change its registered name;
  - (B) Require the entity to register the new name with the director; and
  - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter [415,] 414, 414D, 415A, [415B,] 425, 425D, or 428, as applicable.”

SECTION 66. Section 428-901, Hawaii Revised Statutes, is amended by amending the definition of “corporation” to read as follows:

““Corporation” means a corporation under the Hawaii Business Corporation Act, chapter [415,] 414, a predecessor law, or comparable law of another jurisdiction.”

SECTION 67. Section 428-907, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§428-907]]~~ **Dissenters’ rights.** The shareholders of a domestic corporation that is a party to a merger authorized by section 428-904 have the rights of dissenting shareholders in the manner provided in ~~[section 415-81.]~~ part XIV of chapter 414.”

SECTION 68. Section 431:4-104, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The articles of incorporation shall state in addition to the requirements set forth in section ~~[415-54:]~~ 414-32:

- (1) The name of the insurer, which shall include the word “Insurance” and, as the last word thereof, one of the words “Corporation”, “Incorporated”, or “Limited”, or one of the abbreviations “Corp.”, “Inc.”, or “Ltd.”. In the case of the reciprocal insurer, the name shall include the word “Reciprocal”, “Interinsurer”, “Interinsurance”, “Exchange”, “Underwriters”, or “Underwriting”;
- (2) (A) Whether it is a stock or mutual insurer; and  
(B) The classes of insurance it will issue, according to the designations made in this article.
- (3) The place of its principal office, which shall be established and maintained in this State.
- (4) (A) If a stock insurer, the amount of its capital, the aggregate number of shares, and the par value of each share, which par value shall not be less than \$2, and if the privilege of subsequent extension of the authorized capital stock is sought, then the limit of such extension shall be stated;  
(B) If a mutual insurer, the maximum contingent liability of its policyholders for the payment of its expenses and losses occurring under its policies.
- (5) The names and addresses, both business and residence, of the officers of the insurer for the initial term.
- (6) Other provisions, not inconsistent with law, as may be deemed proper by the incorporators.”

SECTION 69. Section 431:4-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic stock insurer may increase its capital stock by complying with section ~~[415-58]~~ 414-281 and section 431:4-120. The increase in capital shall be effective upon the payment of the increased capital in full in cash.”

SECTION 70. Section 431:14A-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The Hawaii employers’ mutual insurance company is established as an independent corporation to provide workers’ compensation insurance and related services to Hawaii employers. The company may be reorganized as a nonprofit corporation under chapter ~~[415B:]~~ 414D.”

SECTION 71. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definition of “pure nonprofit captive insurance company” to read as follows:

““Pure nonprofit captive insurance company” means a pure captive insurance company formed without capital stock as a nonprofit corporation under chapter ~~[415B:]~~ 414D, whose voting of membership interest is held by a parent organization formed under a nonprofit law or by such nonprofit parent and its affiliated companies.”

SECTION 72. Section 431:19-102.4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Upon any transfer authorized pursuant to this section, the captive insurance company shall cease to be domiciled in this State, and its corporate or other legal existence in this State shall cease upon the issuance of a certificate of discontinuance by the department of commerce and consumer affairs; provided that at the time of issuance of the certificate of discontinuance, the captive insurance company shall pay a certificate fee in accordance with chapter ~~[415:]~~ 414.”

SECTION 73. Section 431:19-106.5, Hawaii Revised Statutes, is amended:

(1) By amending subsection (c) to read as follows:

“(c) After approval of the plan of conversion or merger by the commissioner, the converting or merging insurer shall file with the director of commerce and consumer affairs, appropriate articles of amendment or articles of merger, as the case may be; provided that in the case of the conversion of a reciprocal insurer to a stock or mutual insurer, the existing reciprocal insurer shall file articles of incorporation in order to commence the corporate existence of the company in the form of a stock or mutual insurer. Documents filed with the director of commerce and consumer affairs pursuant to this subsection shall comply with all applicable requirements for such documents as may be contained in this article and chapter ~~[415:]~~ 414 or ~~[415B:]~~ 414D.”

(2) By amending subsection (g) to read as follows:

“(g) An alien or foreign insurer may be a party to a merger under this section provided that the surviving company shall otherwise qualify and be approved by the commissioner as a captive insurance company under this article. For purposes of chapters ~~[415]~~ 414 and ~~[415B:]~~ 414D, an alien stock or mutual insurer subject to this section shall be considered a foreign corporation.”

SECTION 74. Section 432C-1, Hawaii Revised Statutes, is amended by amending the definition of “for-profit entity” to read as follows:

““For-profit entity” means a corporation organized under chapter ~~[415:]~~ 414, including a stock insurance company.”

SECTION 75. Section 441-24, Hawaii Revised Statutes, is amended to read as follows:

**“§441-24 Inspection of cemetery or pre-need funeral authority books; annual exhibits.** The books, records, and papers of every cemetery authority whether or not a corporation, which operates or claims to operate a perpetual care cemetery, and of every pre-need funeral authority shall be subject to examination by the director to the same extent and in the same manner as may be from time to time provided for corporations in section ~~[415-125:]~~ 414-472, and every cemetery authority operating a perpetual care cemetery, and every pre-need funeral authority shall submit such information as may be required by the director in order to furnish information as to whether or not the cemetery or pre-need funeral authority has complied with this chapter.”

SECTION 76. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director of commerce and consumer affairs shall cause the print, label, trademark, service mark, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the print,

label, trademark, service mark, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, trademark, service mark, or trade name which is substantially identical with any registered print, label, trademark, service mark, or trade name or with the name of any corporation or partnership registered in accordance with chapters [415,] 414, 414D, 415A, [415B,] 425, and 425D; provided further that the print, label, trademark, service mark, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name, or trademark.”

SECTION 77. Section 485-5, Hawaii Revised Statutes, is amended to read as follows:

**“§485-5 Exempted securities; local development company.** Securities issued by a local development company organized within the State for profit under chapter [415] 414 and approved by the Small Business Administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended, are exempted from this chapter, except such provisions relating to the prospectus, upon the approval of the commissioner of securities. The commissioner shall grant approval for the exemption upon finding that the proposed plan of business of the applicant and the proposed issuance of securities are fair, just, and equitable, that the applicant intends to transact its business fairly and honestly, and that the securities that the applicant proposes to issue and the method to be used by the applicant in issuing or disposing of such securities are not such as, in the opinion of the commissioner, will work a fraud upon the purchaser thereof.”

SECTION 78. Act 15, Session Laws of Hawaii, 2001, is amended by amending section 5 to amend subsection (a) of section 482-3, Hawaii Revised Statutes, to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the print, label, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the print, label, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, or trade name which is substantially identical with any registered print, label, or trade name or with the name of any corporation, partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, [415B,] 425, 425D, and 428; provided further that the print, label, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States, or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, or limited liability company name or trade name.”

SECTION 79. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 80. This Act shall take effect on July 1, 2002; provided that section 78 of this Act shall take effect on July 1, 2003.

(Approved April 23, 2002.)

ACT 41

S.B. NO. 2730

A Bill for an Act Relating to Mergers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 414, Hawaii Revised Statutes, is amended by adding to part XII two new sections to be appropriately designated and to read as follows:

**“§414-A Definitions.** As used in this part:

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership, limited liability partnership, or limited partnership, the registration statement; and
- (3) For a limited liability company, the articles of organization.

“Other business entity” means a nonprofit corporation, limited liability company, general partnership, limited partnership, or limited liability partnership.

**§414-B Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 414-315(d). Section 414-315(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.”

SECTION 2. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part X a new section to be appropriately designated and to read as follows:

**“§414D-A Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 414D-203(d). Section 414D-203(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.”

SECTION 3. Chapter 425, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART A. MERGERS**

**§425-A Definitions.** As used in this part:

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership, limited liability partnership, or limited partnership, the registration statement; and
- (3) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, a limited liability company, or a limited partnership.

**§425-B Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 425-D(d). Section 425-D(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.

**§425-C Merger of general partnerships and limited liability partnerships.** (a) Pursuant to a plan of merger, a domestic general partnership, foreign general partnership, domestic limited liability partnership, or foreign limited liability partnership may merge with one or more domestic professional corporations or with one or more general partnerships, limited liability partnerships, or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign general partnerships or limited liability partnerships, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
- (2) The name of the surviving entity with or into which the other entity or entities will merge;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part;
- (5) The street address of the surviving entity’s principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (6) Amendments, if any, to the organizing articles of the surviving entity or, if no such amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

(c) A plan of merger may:

- (1) Amend the partnership agreement of a general partnership or limited liability partnership; or
- (2) Adopt a new partnership agreement, for a general partnership or limited liability partnership if it is the surviving entity in the merger.

Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a general partnership’s or limited liability partnership’s partnership agreement or other agreement, or as otherwise permitted by law; provided that the partnership agreement of any constituent partnership or limited liability partnership to the merger (including a partnership or a limited liability partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving general partnership or limited liability partnership.

(d) A plan of merger may set forth other provisions relating to the merger.

(e) A plan of merger shall be approved:



- (1) In the case of a domestic general partnership or limited liability partnership that is a party to the merger, unless otherwise provided by the partnership agreement, by the vote of all partners; and
- (2) In the case of a foreign general partnership or foreign limited liability partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership or foreign limited liability partnership is organized.

(f) If a foreign general partnership or foreign limited liability partnership is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign general partnership or foreign limited liability partnership is not already authorized to do business in the State.

(g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.

(h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the partners of any partnership or limited liability partnership notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the partners of the constituent partnerships to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the partners of any constituent partnership shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of the constituent partnership; or
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

(i) A merger takes effect on the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.

**§425-D Articles of merger.** (a) After approval of the plan of merger, unless the merger is terminated, articles of merger shall be signed on behalf of each general partnership or limited liability partnership, and each entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name, address, and jurisdiction of organization of the entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger;

provided that the effective date shall not be more than thirty days from the filing date; and

- (5) A statement that includes:
  - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
  - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
  - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:
  - (1) The plan of merger is amended to change the future effective date;
  - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
  - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger shall operate as an amendment to the general partnership's or limited liability partnership's organizing articles.

(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign general partnership or domestic or foreign limited liability partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or
- (2) If a nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving entity shall file with the director an application for withdrawal no later than sixty days after the merger is effective.

**§425-E Effect of merger.** (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the

surviving entity may be substituted as a party to the action or proceeding; and

- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A partner of a surviving partnership or limited liability partnership shall be liable for all obligations of a party to the merger for which the partner was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a general partnership or limited liability partnership that is not the surviving entity in the merger shall not require the general partnership or limited liability partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

**§425-F Dissenters' rights.** The shareholders of a domestic corporation that is a party to a merger authorized by section 425-C shall have the rights of dissenting shareholders in the manner provided in part XIV of chapter 414."

SECTION 4. Chapter 425D, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

#### **"ARTICLE A. MERGERS**

**§425D-A Definitions.** As used in this part:

"Merger" means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

"Organizing articles" means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership, limited liability partnership, or limited partnership, the registration statement; and
- (3) For a limited liability company, the articles of organization.

"Other business entity" means a corporation, limited liability company, general partnership, or limited liability partnership.

**§425D-B Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 425D-D(d). Section 425D-D(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.

**§425D-C Merger.** (a) Pursuant to a plan of merger, a domestic limited partnership may merge with one or more domestic professional corporations or with one or more limited partnerships or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign

jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign limited partnerships, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
  - (2) The name of the surviving entity with or into which the other entity or entities will merge;
  - (3) The terms and conditions of the merger;
  - (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part;
  - (5) The street address of the surviving entity's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
  - (6) Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.
- (c) A plan of merger may:
- (1) Amend the partnership agreement of the limited partnership; or
  - (2) Adopt a new partnership agreement, for a limited partnership if it is the surviving entity in the merger.

Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a limited partnership's partnership agreement or other agreement, or as otherwise permitted by law; provided that the partnership agreement of any constituent limited partnership to the merger (including a limited partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving limited partnership.

(d) A plan of merger may set forth other provisions relating to the merger.

(e) A plan of merger shall be approved:

- (1) In the case of a domestic limited partnership that is a party to the merger, unless otherwise provided by the partnership agreement, by the vote of all general partners and by the limited partners; provided that if there is more than one class of limited partners, then by each class of limited partners, in either case, by limited partners who own more than fifty per cent of the then current percentage owned by all of the limited partners or by the limited partners in each class as appropriate; and
- (2) In the case of a foreign limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign limited partnership is organized.

(f) If a foreign limited partnership is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign limited partnership is not already authorized to do business in the State.

(g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.

(h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the partners of any limited partnership notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the partners of the constituent partnerships to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the partners of any constituent partnership shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of such the partnership; or
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

(i) A merger takes effect upon the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.

**§425D-D Articles of merger.** (a) After approval of the plan of merger, unless the merger is terminated, articles of merger shall be signed on behalf of each limited partnership, and each entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name, address, and jurisdiction of organization of the entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
  - (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
  - (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
  - (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
  - (5) A statement that includes:
    - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
    - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, and includes the resident's street address in this State; and
    - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:

- (1) The plan of merger is amended to change the future effective date;
- (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger shall operate as an amendment to the limited partnership's organizing articles.

(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving entity shall file with the director an application for withdrawal no later than sixty days after the merger is effective.

**§425D-E Effect of merger.** (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and
- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A general partner or limited partner of a surviving limited partnership shall be liable for all obligations of a party to the merger for which the general partner or limited partner was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a limited partnership that is not the surviving entity in the merger shall not require the limited partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

**§425D-F Dissenters' rights.** The shareholders of a domestic corporation that is a party to a merger authorized by section 425D-C shall have the rights of dissenting shareholders in the manner provided in part XIV of chapter 414."

SECTION 5. Chapter 428, Hawaii Revised Statutes, is amended by adding to part IX a new section to be appropriately designated and to read as follows:

**"§428-B Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 428-905(d). Section 428-905(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003."

SECTION 6. Section 414-311, Hawaii Revised Statutes, is amended to read as follows:

**"[§414-311] Merger.** (a) [One or more corporations] Pursuant to a plan of merger adopted by the board of directors and approved by the shareholders (if required under section 414-313), a domestic or foreign corporation may merge [into another corporation if the board of directors of each corporation adopts and its shareholders (if required by section 414-313) approve a plan of merger.] with one or more domestic professional corporations, or with one or more corporations or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign corporations, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

(b) The plan of merger [must] shall set forth:

(1) [The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;] The name and jurisdiction of formation or organization of each entity that is a party to the merger;

(2) The name of the surviving entity with or into which the other entity or entities will merge;

[(2)] (3) The terms and conditions of the merger; [and]

[(3)] (4) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or in part[-

(e) The plan of merger may set forth:];

(5) The street address of the surviving entity's principal place of business or, if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and

[(4)] (6) Amendments, if any, to the organizing articles of [incorporation of] the surviving [corporation; and] entity or, if no amendments

are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

~~[(2) Other]~~ (c) A plan of merger may set forth other provisions relating to the merger.

(d) If a foreign corporation survives a merger, it shall not do business in this State until an application for a certificate of authority is filed with the department director if the foreign corporation is not already authorized to do business in the State.

(e) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.’’

SECTION 7. Section 414-312, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-312]]~~ **Share exchange.** (a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by section 414-313) approve the exchange.

(b) The plan of exchange ~~[must]~~ shall set forth:

- (1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;
- (2) The terms and conditions of the exchange; and
- (3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or for cash or other property in whole or in part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) The corporation whose shares will be acquired shall be a domestic corporation, whether or not the law of the state or country under whose law the acquiring corporation is incorporated permits a share exchange.

~~[(d)]~~ (e) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.’’

SECTION 8. Section 414-313, Hawaii Revised Statutes, is amended to read as follows:

“**§414-313 Action plan.** (a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (h)) or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

- (1) The board of directors ~~[must]~~ shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and
- (2) The shareholders entitled to vote ~~[must]~~ shall approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with section 414-125.



The notice [~~must~~] shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) With respect to corporations incorporated on or after July 1, 1987, at such a meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of a majority of each class of the shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if any such plan contains any provision that, if contained in a proposed amendment to articles of incorporation, would entitle that class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.

(f) With respect to corporations incorporated before July 1, 1987, at such meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock having voting power even though their right to vote is otherwise restricted or denied by the articles, bylaws, or resolutions of any such corporation. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall be not less than the proportion set forth in subsection (e).

(g) Separate voting by voting groups is required:

- (1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 414-284; or
- (2) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(h) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

- (1) The articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in section 414-282) from the articles of incorporation before the merger;
- (2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;
- (3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty per cent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and
- (4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty per cent the total number of participating shares outstanding immediately before the merger.

(i) As used in subsection (h):

“Participating shares” means shares that entitle their holders to participate without limitations in distributions.

“Voting shares” means shares that entitle their holders to vote unconditionally in elections of directors.

(j) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors. A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the board of directors of any constituent corporation notwithstanding approval of the plan by the stockholders of all or any of the constituent corporations. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the department director. A plan of merger may allow the boards of directors of the constituent corporations to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the stockholders of any constituent corporation shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights or any of them to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of the constituent corporation;
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger; or
- (3) Alter or change any of the terms and conditions of the plan if the alteration or change would adversely affect the holders of any class or series thereof of the constituent corporation.

If the plan of merger is amended after the articles are filed with the department director but before the plan has become effective, articles of amendment shall be filed with the department director.

(k) A merger or share exchange takes effect on the filing date of the articles of merger or share exchange, or on the date subsequent to the filing as set forth in the articles of merger or share exchange; provided that the effective date shall not be more than thirty days from the filing date.”

SECTION 9. Section 414-315, Hawaii Revised Statutes, is amended to read as follows:

**“§414-315 Articles of merger or share exchange.** (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the department director for filing articles of merger or share exchange setting forth:

- (1) For a merger, the name and jurisdiction of each entity that is a party to the merger and the name, address, and jurisdiction of the surviving entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) For a share exchange, the name of the corporation whose shares will be acquired and the name of the acquiring corporation;
- (4) (3) A statement that the plan of merger or share exchange has been approved by [the board of directors of] each [corporation] entity involved in the merger or share exchange;

- (2) (4) If shareholder approval was not required, a statement to that effect;
- (3) (5) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:
  - (A) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and
  - (B) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group; and
- (4) (6) If a merger, a statement indicating [the] any changes in the organizing articles [of incorporation] of the surviving [corporation] entity to be [effected] given effect by the merger[.

(b) A merger or share exchange takes effect upon the effective time and date of the filing of articles of merger or share exchange, or upon the time and date subsequent to the filing as set forth in the articles of merger or share exchange; provided not more than thirty days elapse from the date of filing.; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and

- (7) A statement that includes:
  - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
  - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
  - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.

(b) If the articles of merger provide for a future effective date, and:

- (1) The plan of merger is amended to change the future effective date;
- (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the department director articles of amendment that identify the articles of merger and set forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the department director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the corporation's articles of incorporation.

(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a nonsurviving entity is registered in this State and the surviving entity is not registered in this State, the nonsurviving entity shall file with the department director an application for a certificate of withdrawal no later than sixty days after the merger is effective."

SECTION 10. Section 414-316, Hawaii Revised Statutes, is amended to read as follows:

**“[§414-316] Effect of merger or share exchange.** (a) When a merger takes effect:

- (1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;
- (3) The surviving corporation has all liabilities of each corporation party to the merger;
- (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;
- (5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger and indicated in the articles of merger; and
- (6) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under part XIV.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under part XIV.

(c) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed."

SECTION 11. Section 414-318, Hawaii Revised Statutes, is amended to read as follows:

**“§414-318 Merger of subsidiary corporations.** (a) Any corporation owning at least ninety per cent of the outstanding shares of each class of two or more corporations may adopt a plan of merger pursuant to section 414-314 that shall be delivered to the department director for filing including articles of merger. The articles of merger shall be signed by the parent corporation and the surviving subsidiary corporation. The plan of merger shall set forth:

- (1) The name of the parent corporation owning at least ninety per cent of the shares of the subsidiary corporations, the name of any nonsurviving subsidiary corporation, and the name of the surviving subsidiary corporation; and
  - (2) The manner and basis of converting the shares of any nonsurviving subsidiary corporation into shares, obligations, or other securities of the surviving subsidiary corporation or of any other corporation or, in whole or in part, into cash or other property.
- (b) A copy of the plan of merger shall be mailed to each shareholder of record of any nonsurviving subsidiary corporation, except the parent corporation.
- (c) On or after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of any nonsurviving subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, the articles of merger shall be delivered to the department director for filing. Articles of merger shall set forth:
- (1) A statement that the plan of merger has been approved by the board of directors of the parent corporation;
  - (2) The number of outstanding shares of each class of any nonsurviving subsidiary corporation and the number of the shares of each class owned by the parent corporation; and
  - (3) The date a copy of the plan of merger is mailed to shareholders of any nonsurviving subsidiary corporation entitled to receive the plan of merger.
- (d) Mergers under this section shall also be subject to sections 414-313(k) and 414-315(a), (b), and (d)."

SECTION 12. Section 414D-14, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

““Corporation” means a nonprofit corporation unless otherwise specified.

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Profit corporation” means a corporation organized for profit and registered under chapter 414.”

SECTION 13. Section 414D-201, Hawaii Revised Statutes, is amended to read as follows:

**“[§414D-201] Approval of plan of merger.] Merger.** (a) [One or more nonprofit corporations may merge into a business or nonprofit corporation, if the] Pursuant to a plan of merger [is] approved as provided in section 414D-202[-], a domestic or foreign corporation may merge with one or more profit or nonprofit corporations organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic or foreign corporations being the surviving corporation, as provided in the

plan; provided that the merger is permitted by the law of the state or country under whose law each foreign corporation that is a party to the merger is organized.

- (b) The plan of merger shall set forth:
  - (1) The name and jurisdiction of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;
  - (2) The terms and conditions of the ~~[planned]~~ merger; ~~[and]~~
  - (3) The manner and basis~~[-if any, of]~~ for converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part[-];
- ~~(c) The plan of merger may set forth:];~~
- (4) The street address of the surviving corporation's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- ~~[(+)~~ ~~Any amendments]~~ (5) Amendments, if any, to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger[-; and] or, if no amendments are desired, a statement that the articles of incorporation of the surviving corporation shall not be amended pursuant to the merger.
- ~~[(2) Other]~~ (c) A plan of merger may set forth other provisions relating to the [planned] merger.
- (d) If a foreign corporation survives a merger, it shall not do business in this State until an application for a certificate of authority is filed with the department director if the foreign corporation is not already authorized to do business in the State.
- (e) The surviving corporation shall furnish a copy of the plan of merger, on request and without cost, to any member or shareholder of any corporation that is a party to the merger."

SECTION 14. Section 414D-202, Hawaii Revised Statutes, is amended to read as follows:

- “[[§414D-202[)] Action on plan by board, members, and third persons.**
- (a) Unless this chapter, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (c)) require a greater vote or voting by class, a plan of merger to be adopted shall be approved:
    - (1) By the board;
    - (2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
    - (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 414D-188 for an amendment to the articles or bylaws.
  - (b) If the corporation does not have members, the merger ~~[must]~~ shall be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which the approval is to be obtained in accordance with section 414D-145(c). The notice ~~[must]~~ shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.
  - (c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.
  - (d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the

proposed membership meeting in accordance with section 414D-105. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 414D-184 or 414D-187. The plan shall be approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors. A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the board of directors of any constituent corporation notwithstanding approval of the plan by the stockholders of all or any of the constituent corporations. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the department director. A plan of merger may allow the boards of directors of the constituent corporations to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the stockholders of any constituent corporation shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights or any of them to be received in exchange for or on conversion of all or any of the interests of the constituent corporation;
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger; or
- (3) Alter or change any of the terms and conditions of the plan if the alteration or change would adversely affect the holders of any interest of the constituent corporation.

If the plan of merger is amended after the articles are filed with the department director but before the plan has become effective, articles of amendment shall be filed with the department director.

(k)<sup>1</sup> A merger takes effect on the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.”

SECTION 15. Section 414D-203, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414D-203]]~~ **Articles of merger.** (a) After a plan of merger is approved by the board of directors[,], and, if required by section 414D-202, by the members and any other persons, the surviving or acquiring corporation shall deliver to the department director articles of merger setting forth:

- (1) The plan of merger;
- (2) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;
- (3) If approval by members was required:
  - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and
  - (B) The total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;
- (4) If approval of the plan by some person or persons other than the members or the board is required pursuant to section 414D-202, a statement that the approval was obtained[-];
- (5) If a merger, a statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
- (6) A statement that includes:
  - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
  - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
  - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:
  - (1) The plan of merger is amended to change the future effective date;
  - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
  - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the department director articles of amendment that identify the articles of merger and set forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the department director a certificate of termination that identifies the articles of merger and the plan of merger and states that the plan of merger has been terminated.



(c) Articles of merger operate as an amendment to the corporation's articles of incorporation.

(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or
- (2) If the nonsurviving entity or entities is or are registered in this State and the surviving entity is not registered in this State, the nonsurviving entity or entities shall file with the department director a certificate of withdrawal no later than sixty days after the merger is effective."

SECTION 16. Section 414D-204, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~414D-204~~] Effect of merger.~~ (a) When a merger takes effect:**

- (1) Every corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;
- (3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;
- (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and
- (5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving corporation at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the corporation receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed."

SECTION 17. Section 415A-16, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~415A-16~~] Merger and [consolidation.~~ (a) A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation.**

~~(b) Upon the merger or consolidation of a professional corporation, if the surviving or new corporation, as the case may be, is to render professional services in this State, it shall comply with this chapter.] share exchange. A professional corporation involved in a merger or share exchange shall be subject to the provisions for mergers and share exchanges set forth in chapter 414.~~

SECTION 18. Section 425-192, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic partnership or limited liability partnership may adopt a plan of conversion and convert to a foreign partnership, limited liability partnership, or any other entity if:

- (1) The domestic partnership or limited liability partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections [425-194] 425-C and 428-904 to 428-906 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity; and
- (4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.”

SECTION 19. Section 425-195, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§425-195[H]** **Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting ~~[H]~~entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity, without any need for substitution of parties;
- (6) The partnership interests, and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted;
- (7) A shareholder, partner, member, or other owner of the converted entity, shall be liable for the debts and obligations of the converting entity that

existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:

- (A) Agreed in writing to be liable for such debts or obligations;
  - (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
  - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign partnership, limited liability partnership, or other entity, the converted entity shall appoint a resident of the State as its agent, for service of process in a proceeding to enforce any obligation or rights of dissenting partners of the converting domestic partnership or limited liability partnership; and
- (9) If the converting partnership is a domestic partnership, or limited liability partnership, section ~~[425-494]~~ 425-C shall apply as if the converted entity were the survivor of a merger with the converting entity.”

SECTION 20. Section 425D-1110, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic limited partnership may adopt a plan of conversion and convert to a foreign limited partnership or any other entity if:

- (1) The domestic limited partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections ~~[425-494]~~ 425-C and 428-904 to 428-906, as if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity; and
- (4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.”

SECTION 21. Section 425D-1113, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§425D-1113]]~~ **Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;

- (4) The rights of creditors of the converting [{}entity{}] shall continue against the converted [{}entity{}] and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The partnership interests and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
  - (A) Agreed in writing to be liable for such debts or obligations;
  - (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
  - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign limited partnership or other entity, the converted entity shall appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or rights of dissenting limited partners of the converting domestic limited partnership; and
- (9) If the converting partnership is a domestic limited partnership, section ~~[425D-1109]~~ 425D-C shall apply as if the converted entity were the survivor of a merger with the converting entity."

SECTION 22. Section 428-901, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

"Merger" means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

"Organizing articles" means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership, limited liability partnership, or limited partnership, the registration statement; and
- (3) For a limited liability company, the articles of organization.

"Other business entity" means a corporation, a general partnership, a limited partnership, or a limited liability partnership."

SECTION 23. Section 428-904, Hawaii Revised Statutes, is amended to read as follows:

**"[H]§428-904[)] Merger.** (a) Pursuant to a plan of merger ~~[approved under subsection (c), one or more domestic or foreign limited liability companies, one or more domestic or foreign general or limited partnerships, and one or more domestic or foreign corporations may be merged into a domestic or foreign limited liability company.]~~, a domestic or foreign limited liability company may merge with one or more domestic professional corporations, or with one or more limited liability companies or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic

or foreign limited liability companies, or other business entities whether domestic or foreign, being the surviving entity as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

(b) [A] The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
- (2) The name of the surviving [~~limited liability company~~] entity with or into which the other entity or entities will merge;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving [~~company~~] entity, or into money or other property in whole or in part;
- (5) The street address of the surviving [~~company~~]'s entity's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (6) Amendments, if any, to the organizing articles [~~of organization~~] of the surviving [~~company~~] entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

(c) A plan of merger may:

- (1) Amend the operating agreement of a limited liability company; or
- (2) Adopt a new operating agreement for a limited liability company if it is the surviving entity in the merger.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law; provided that the limited liability company agreement of any constituent limited liability company to the merger (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

(d) A plan of merger may set forth other provisions relating to the merger.

[(e)] (e) A plan of merger shall be approved:

- (1) In the case of a limited liability company that is a party to the merger, by the members representing the percentage of ownership specified in the operating agreement, but not fewer than the members holding a majority of the ownership, or if provision is not made in the operating agreement, by all the members; and
- (2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
- (3) In the case of a corporation that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the corporation is organized;
- (4) In the case of a domestic limited partnership that is a party to the merger, by all of the partners;
- (5) In the case of a foreign limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or

foreign jurisdiction in which the foreign limited partnership is organized;

- (6) In the case of a domestic general partnership that is a party to the merger, by the vote of all partners; and
- (7) In the case of a foreign general partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership is organized.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger shall be effective upon the filing of the articles of merger with the director or at such later date and time as the articles may provide, but not more than thirty days after the filing.

(f) If a foreign limited liability company is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign limited liability company is not already authorized to do business in the State.

(g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.

(h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the members or managers of any limited liability company notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the members or managers of the constituent limited liability companies to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the members or managers of any constituent limited liability company shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of the constituent company; or
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

(i) A merger takes effect on the filing date of the articles of merger or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date."

SECTION 24. Section 428-905, Hawaii Revised Statutes, is amended to read as follows:

**"§428-905 Articles of merger.** (a) After approval of the plan of merger under section [428-904(e),] 428-904(e), unless the merger is [abandoned] terminated under section [428-904(d),] 428-904(h), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger and delivered to the director for filing. The articles shall set forth [and contain]:

- (1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger, and the name, address, and jurisdiction of organization of the limited liability company into which

they propose to merge, which is hereinafter designated as the surviving [company:] entity;

- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- ~~[(3) As to each entity, the total authorized votes and the number voted for and against the plan;~~
- (4) (3) A statement indicating [the] any changes in the organizing articles [of organization] of the surviving [company] entity to be [effected] given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- ~~[(5) The effective date and time of the merger, which shall be not earlier than the date and time of filing of the articles of merger and not later than thirty days after the filing of the articles of merger; and]~~
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
- ~~[(6) If the surviving company is a foreign limited liability company, it shall file with the director:]~~
- (5) A statement that includes:
  - (A) An agreement that the surviving [company] entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
  - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, ~~[and include]~~ that includes the resident's street address in this State; and
  - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving [company:] entity.

~~[(b) If a foreign limited liability company is the surviving company of a merger, it shall not do business in this State until an application for that authority is filed with the director.~~

~~(c) The surviving company shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.]~~

~~(b) If the articles of merger provide for a future effective date, and:~~

- ~~(1) The plan of merger is amended to change the future effective date;~~
- ~~(2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or~~
- ~~(3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;~~

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if a plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

~~[(d)]~~ (c) Articles of merger operate as an amendment to the limited liability company's organizing articles ~~[of organization]~~.

(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited liability company that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving entity shall file with the director an application for withdrawal no later than sixty days after the merger is effective."

SECTION 25. Section 428-906, Hawaii Revised Statutes, is amended to read as follows:

**~~“[~~§428-906~~]~~ Effect of merger.** (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving ~~[-company,] entity~~, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving ~~[-company;] entity~~;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving ~~[company;] entity~~;
- (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving ~~[company] entity~~ may be substituted as a party to the action or proceeding; and
- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving ~~[company.] entity~~.

(b) If ~~[the] a~~ surviving ~~[foreign limited liability company] entity~~ fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving ~~[foreign limited liability company] entity~~ by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving ~~[company] entity~~ at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the ~~[company] surviving entity~~ receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the ~~[company;] surviving entity~~; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A member of ~~[the] a~~ surviving limited liability company shall be liable for all obligations of a party to the merger for which the member was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger ~~[does]~~ shall not require the limited liability company to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.



~~[(e) Articles of merger shall serve as articles of termination for a limited liability company that is not the surviving company in the merger.]”~~

SECTION 26. Section 414-317, Hawaii Revised Statutes, is repealed.

SECTION 27. Section 414-319, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 414D-205, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 425-191, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 425D-1109, Hawaii Revised Statutes, is repealed.

SECTION 31. In codifying references to new parts or sections, added to the Hawaii Revised Statutes, the revisor of statutes shall substitute appropriate part, article, or section numbers for the letters used in the designation of the new part, article, or sections.

SECTION 32. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 33. This Act shall take effect on July 1, 2003.

(Approved April 23, 2002.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 42

S.B. NO. 2768

A Bill for an Act Relating to Access for Persons with Disabilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 103-50, Hawaii Revised Statutes, is amended to read as follows:

#### **“§103-50 Building design to consider needs of persons with disabilities.**

(a) Notwithstanding any other law to the contrary, all plans and specifications for the construction of public buildings, facilities, and sites shall be prepared so that the buildings, facilities, and sites are accessible to and usable by persons with disabilities. The buildings, facilities, and sites shall conform to the Americans with Disabilities Act Accessibility Guidelines, title 36 [C.F.R.] Code of Federal Regulations part 1191, and the requirements of the Federal Fair Housing Amendments Act of 1988, as established in title 24 Code of Federal Regulations part 100, subpart D, as adopted and amended by the disability and communication access board under chapter 348F.

(b) All state and county agencies subject to this section shall seek advice and recommendations from the disability and communication access board on any construction plans prior to commencing with construction.

(c) The disability and communication access board shall adopt rules pursuant to chapter 91 for the design of buildings ~~[and]~~, facilities, and sites, by or on behalf of the State and counties to effectuate the purposes of this section, except that the

board, without regard to chapter 91, instead, may adopt federal amendments to the Americans with Disabilities Act Accessibility Guidelines, title 36 [C.F.R.] Code of Federal Regulations part 1191.

(d) The board may approve a site specific alternate design when an alternate design provides equal or greater access.

(e) For the purposes of this section, “public buildings, facilities, and sites” means buildings, facilities, and sites that:

- (1) Are designed, constructed, purchased, or leased with the use of any [federal,] state[,] or county funds[;] or federal funds administered by the State or a county;
- (2) House state or county programs, services, or activities that are intended to be accessed by the general public; or
- (3) Are constructed on state or county lands or lands that will be transferred to the State or a county.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

## ACT 43

S.B. NO. 2787

A Bill for an Act Relating to the Wage and Hour Law.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 387-1, Hawaii Revised Statutes, is amended by amending the definition of “employee” to read as follows:

““Employee” includes any individual employed by an employer, but shall not include any individual employed:

- (1) At a guaranteed compensation totaling [~~\$1,250~~] \$2,000 or more a month, whether paid weekly, biweekly, or monthly;
- (2) In agriculture for any workweek in which the employer of the individual employs less than twenty employees or in agriculture for any workweek in which the individual is engaged in coffee harvesting;
- (3) In domestic service in or about the home of the individual’s employer or as a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code;
- (4) By the individual’s brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law;
- (5) In a bona fide executive, administrative, supervisory, or professional capacity or in the capacity of outside salesperson or as an outside collector;
- (6) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, [~~crustacea, sponges, seaweeds,~~] crustacean, sponge, seaweed, or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;
- (7) As a seaman;

- (8) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;
- (9) As a golf caddy;
- (10) By a nonprofit school during the time such individual is a student attending such school;
- (11) In any capacity if by reason of the employee's employment in such capacity and during the term thereof the minimum wage which may be paid the employee or maximum hours which the employee may work during any workweek without the payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as amended, or as the same may be further amended from time to time; provided that if the minimum wage which may be paid the employee under the Fair Labor Standards Act for any workweek is less than the minimum wage prescribed by section 387-2, then section 387-2 shall apply in respect to the employees for such workweek; provided further that if the maximum workweek established for the employee under the Fair Labor Standards Act for the purposes of overtime compensation is higher than the maximum workweek established under section 387-3, then section 387-3 shall apply in respect to such employee for such workweek; except that the employee's regular rate in such an event shall be the employee's regular rate as determined under the Fair Labor Standards Act;
- (12) As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or nonprofit organizations exempt from income tax under section 501 of the federal Internal Revenue Code or in a youth camp accredited by the American Camping Association; or
- (13) As an automobile salesperson primarily engaged in the selling of automobiles or trucks if employed by an automobile or truck dealer licensed under chapter 437.'

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved April 23, 2002.)

## ACT 44

S.B. NO. 2792

A Bill for an Act Relating to the Hawaii State Public Library System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Security services are a vital component of the library services to provide a safe and secure environment. Uniform security personnel reduces or minimizes disruptive behavior and unpleasant incidents within the library and all of its surroundings, and allows the library staff to concentrate on providing quality and prompt library services to its customers. Since 1993 security coverage has been reduced dramatically due to budget restrictions, budget cuts, and hiring delays and freezes.

The purpose of this Act is to transfer public safety functions and employees from the department of public safety to the department of education and the Hawaii

state public library system to maintain a safe and secure environment for patrons and employees more efficiently.

SECTION 2. Section 26-14.6, Hawaii Revised Statutes, is amended to read as follows:

**“§26-14.6 Department of public safety.** (a) The department of public safety shall be headed by a single executive to be known as the director of public safety.

(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all public or private correctional facilities and services, for the service of process, and for the security of state buildings.

(c) Effective July 1, 1990, the Hawaii paroling authority and the crime victim compensation commission are placed within the department of public safety for administrative purposes only.

(d) Effective July 1, 1990, the functions and authority heretofore exercised by:

- (1) The department of corrections relating to adult corrections and the intake service centers;
- (2) The judiciary relating to the sheriff's office and judiciary security personnel; and
- (3) The department of the attorney general relating to state law enforcement officers and narcotics enforcement investigators with the narcotics enforcement division,

shall be transferred to the department of public safety.

(e) Effective July 1, 1990, the functions and authority heretofore exercised by the department of health pursuant to chapters 329 and 329C, with the exception of sections 329-2, 329-3, and 329-4(3) to (8), shall be transferred to the department of public safety.

(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a “sheriff”, “sheriffs”, a “sheriff's deputy”, “sheriff's deputies”, a “deputy sheriff”, “deputy sheriffs”, or a “deputy”, under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51, 183D-11, 187A-14, 201G-55, 201G-74, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 353-11, 383-71, 438-5, 445-37, 482E-4, 485-6, 501-42, 501-171, 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety.

(g) Effective January 1, 1993, the functions and authority heretofore exercised by the attorney general and the department of the attorney general relating to the executive security officers shall be transferred to the department of public safety.

(h) Effective July 1, 1999, the functions and authority heretofore exercised by the director of public safety and the department of public safety relating to after hours security contracts at department of education facilities, except for the security functions being performed by employees of the public library system as well as the contractual security services for the libraries, shall be transferred to the department of education.

(i) Effective January 1, 1993, the functions and authority heretofore exercised by the director of health and the department of health relating to uniformed

security employees and security contracts at various state hospitals throughout the State shall be transferred to the department of public safety.

(j) Effective January 1, 1993, the functions and authority heretofore exercised by the director of human services and the department of human services relating to contractual security guard services shall be transferred to the department of public safety.

(k) Effective July 1, 1994, the functions and authority heretofore exercised by the adjutant general relating to security for national guard and state civil defense facilities in the Diamond Head complex, for after work hours, shall be transferred to the department of public safety.

(l) Effective July 1, 2002, the functions and authority heretofore exercised by the director of public safety and the department of public safety relating to after hours security contracts at department of education facilities, including all security functions being performed by employees of the public library system, as well as the contractual security services for the libraries, shall be transferred to the department of education and the public library system as appropriate.'

SECTION 3. All rights, powers, functions, and duties of the department of public safety relating to the after hour security contracts at department of education facilities shall be transferred to the department of education and the Hawaii state public library system.

All officers and employees of the department of public safety whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon the transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure who is transferred by this Act shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possess the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have any tenure and who may be transferred or appointed to a civil service position as a consequence of the measure shall become a civil service employee without any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that the officer or employee possess the minimum qualifications for the position to which transferred or appointed.

If an officer or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 4. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of public safety relating to the functions transferred to the Hawaii state public library system and the department of education by this measure shall be transferred with the functions to which they relate.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 23, 2002.)

**ACT 45**

H.B. NO. 1806

A Bill for an Act Relating to Offenses Against Property Rights.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of “Hotel” to read as follows:

““Hotel” means a structure in which [~~all~~] a majority of the tenants are roomers or boarders.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 2002.)

**ACT 46**

H.B. NO. 1093

A Bill for an Act Relating to the Use of Washington Place for Campaign Activities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§84- Washington Place; campaign activities.** The governor shall not allow Washington Place to be used for any events intended to solicit funds, support, or votes for any candidate for elective public office.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 47**

H.B. NO. 1723

A Bill for an Act Relating to Motor Vehicle Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 287-8, Hawaii Revised Statutes, is amended to read as follows:

“§287-8 Further exceptions to requirement of security. The requirements as to security and suspension of sections 287-5 and 287-6 shall not apply:

- (1) To the driver or the registered owner of a motor vehicle involved in an accident where no injury or damage was caused to the person or property of anyone other than the driver or registered owner;
- (2) To the driver or the registered owner of the motor vehicle legally parked at the time of accident;
- (3) To the driver of a motor vehicle ~~[owned by that person's employer]~~ involved in an accident during the normal scope of that person's employment;
- (4) To the registered owner of the motor vehicle if at the time of the accident the vehicle was being operated without the registered owner's permission, express or implied, or was parked by a person who had been operating the motor vehicle without such permission; nor
- (5) If prior to the date the administrator would otherwise suspend the license or permit under section 287-6, there is filed with the administrator evidence satisfactory to the administrator that the driver who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2002.)

## ACT 48

H.B. NO. 1725

A Bill for an Act Relating to Driver License Renewal by Mail.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-107, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Any ~~[resident of this State]~~ person who holds a category (1), (2) or (3) license ~~[and who by reason of the resident's temporary absence from the State]~~ issued under this part who is unable to appear in person before the examiner of drivers to apply for a renewal of the ~~[resident's]~~ driver's license, may, if the ~~[resident]~~ person is not disqualified from renewing the ~~[resident's]~~ license under subsection (a), apply for a renewal by mail. The ~~[resident's]~~ applicant's request to have the ~~[resident's]~~ license renewed by mail must be received by the examiner of drivers within ninety days after the expiration of the ~~[resident's]~~ license~~[-]~~ or be treated as an applicant for reactivation of an expired license under section 286-107.5. The examiner of drivers shall upon receipt of the request, furnish the applicant with all necessary forms and instructions. An application for renewal made pursuant to this subsection shall be accompanied by a statement from a licensed physician certifying that the applicant ~~[had been]~~ was examined by the licensed physician not more than six months prior to the expiration date of the applicant's license and that the applicant ~~[had been]~~ was found by such examination to have met the physical

requirements established by the state director of transportation for the renewal of licenses. The application for renewal shall also be accompanied by:

- (1) A notarized statement of the applicant certifying
  - ~~[(A) To the fact that the applicant is a resident of this State; and~~
  - ~~(B) To the fact]~~ that the applicant does not possess any valid license to operate the same or similar category or categories of motor vehicles, issued by another licensing authority (unless such license is concurrently surrendered); and
- (2) Such other information as may be required by the examiner of drivers ~~[which]~~ that is reasonably necessary to confirm the identity of the applicant and the applicant's fitness to continue to operate a motor vehicle."

2. By amending subsection (g) to read:

"(g) No driver's license shall be renewable by mail for more than two consecutive renewals, regardless of whether the license expires, as provided under section 286-106, on the sixth, ~~[the]~~ fourth ~~[birthday after issuance]~~, or ~~[on the]~~ second birthday after issuance; provided that this subsection shall not apply to a resident military person or that person's immediate family if the resident military person resides outside the State on official military orders."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2002.)

## ACT 49

H.B. NO. 2199

A Bill for an Act Relating to Liquor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Findings and purpose. The legislature finds that the current practice of not allowing diners to take away a partially finished bottle of wine purchased with a meal encourages the patron to consume the remaining liquor quickly, resulting in what is known as "power drinking". Allowing patrons to take the partly filled bottle of wine that they have purchased away with them at the end of their meal will promote more responsible drinking. The purpose of this Act is to permit the patron of a bona fide hotel, restaurant, or club licensed under the liquor laws of this State to remove from the licensed premises any portion of wine that was purchased for consumption with a meal; provided that it is "recorked or resealed" wine in its original container.

This Act does not in any way exempt these patrons from existing prohibitions against driving under the influence of an intoxicant or carrying open containers of alcoholic beverages.

SECTION 2. Section 281-31, Hawaii Revised Statutes, is amended to read as follows:

**"§281-31 Licenses, classes.** (a) Licenses may be granted by the liquor commission as provided in this section.



(b) Class 1. Manufacturers' licenses. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell ~~[the same]~~ it at wholesale in original packages to any person who holds a license to resell ~~[the same,]~~ it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption. Under this license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- (3) Alcohol; and
- (4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer's license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a beer class manufacturer's license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a beer and wine class wholesale dealer licensee under this chapter whose wholesaling is limited to beer, other than direct ownership of a beer and wine class wholesale dealer's license, or direct ownership of a partnership share, one or more shares of stock, or similar proprietary stake in the holder of a beer and wine class wholesale dealer's license.

(c) Class 2. Restaurant licenses. A license under this class shall authorize the licensee to sell liquors specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) A premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

For each category of class 2 licenses there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine; and
- (3) Beer.

Any licensee holding a different class of license on June 19, 1990, and who would otherwise come within this class of license shall not be required to apply for a new license.

(d) Class 3. Wholesale dealers' licenses. A license for the sale of liquors at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell but are not by law required to hold a license, the liquors therein specified in quantities not less than five gallons at one time if sold from or in bulk containers or not less than one gallon if bottled goods; provided that samples of liquor may be sold back to the manufacturer. The license may authorize the licensee to sell draught beer in quantities not less than five gallons at one time to any person for private use and consumption if the licensee files an affidavit with the commission that there is not a class 4 retail dealers licensee available to sell the wholesalers brand of draught beer. Under the license no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquors except alcohol);

- (2) Beer and wine; and
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer has the dealer's license. Nothing in this subsection shall prevent a wholesaler from selling liquors to post exchanges, ships service stores, army or navy officers' clubs, or ~~[like]~~ similar organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise as a common carrier, under chapter 269, engaged in regular flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealers' licenses. A license to sell liquors at retail or to class 10 licenses[,] shall authorize the licensee to sell the liquors therein specified in their original packages. Under the license no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

(f) Class 5. Dispensers' licenses.

- (1) A license under this class shall authorize the licensee to sell liquors specified in this subsection for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (A) A standard bar;
- (B) A premise in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
- (C) A premise in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (D) A premise in which employees or entertainers are compensated to sit with patrons, regardless of whether ~~or not~~ the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

- (2) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (3) For each category of class 5 licenses there shall be the following kinds:
  - (A) General (includes all liquors except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

(g) Class 6. Club licenses. A club license shall be general only (but excluding alcohol) and shall authorize the licensee to sell liquors to members of the club and to guests of the club enjoying the privileges of membership, for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor, if owned by the member, for the member's own personal use and not to be sold[,] and that may be consumed only on the premises.

(h) Class 7. Vessel licenses. A general license may be granted to the owner of any vessel performing a regular water transportation passenger service between any two or more ports in the State for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided the sales are made only while the vessel is en route[,] and only for consumption by passengers on board. If the vessel has a home port in the State, the license shall be issuable in the county in which the home port is situated; provided that if the licensee's home port is not situated in this State, the license shall be issuable in the city and county of Honolulu. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the State [~~the same~~], it shall constitute a violation of this chapter.

(i) Class 8. Transient vessel licenses. A general license may be granted to the owner of any vessel that does not fall within class 7 for the sale of liquor (other than alcohol) on board the vessel while in any port of the State. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

(j) Class 9. Tour or cruise vessel licenses. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the county where the license has been issued. If the vessel has a home port in the State, the license shall be issuable in the county wherein the home port is situated; provided that if the licensee's home port is not situated in this State, the license shall be issuable in the city and county of Honolulu. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the State, [~~the same~~] it shall constitute a violation of this chapter.

(k) Class 10. Special. A special license may be granted for the sale of liquor for a period not to exceed three days on any occasion and under any conditions as may be approved by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine; and
- (3) Beer.

Under this license, the liquors therein specified shall be consumed on the premises.

(l) Class 11. Cabaret license. A cabaret license shall be general only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. This license shall be issued only for premises where food is served, facilities for dancing by the patrons are provided, including a dance floor, and live or amplified recorded music or professional entertainment, except professional entertainment by a person who performs or entertains unclothed, is provided for the patrons; provided that professional entertainment by persons who perform or entertain unclothed shall be authorized by:

- (1) A cabaret license for a premise where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990;
- (2) A cabaret license that, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed.

A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall not

be transferable after June 30, 2000, except when the transferee obtains approval from the liquor commission, and pursuant to rules adopted by the commission. Notwithstanding any rule of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week.

(m) Class 12. Hotel licenses. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquors, except alcohol, for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering; provided that the catering activity is directly related to the licensee's operation as a hotel.

Procedures such as room service, self-service (no-host), minibars or [the like] similar service in guest rooms[;] and service at private parties in areas that are the property of and contiguous to the hotel, are permitted with commission approval.

Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license.

If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281-59.

(n) Class 13. Caterer license. A general license may be granted to any licensee who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions.

No catering service for the sale of liquor [will] shall be performed off the licensee's premises, unless prior written notice of the service has been delivered to the office of the liquor commission of the county concerned. The notice shall state the date, time, and location of the proposed event and shall include a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

(o) Class 14. Brewpub licenses. A brewpub licensee:

- (1) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee's premises during the license year;
- (2) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
- (4) May sell intoxicating liquor, purchased from a class 1, manufacturer licensee, or a class 3, wholesale dealer's licensee, to consumers for consumption on the licensee's premises; provided that the premises is owned and operated by the licensee.

The categories of establishments shall be as follows:

- (A) A standard bar; or
- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(p) It shall be unlawful for any retail licensee, except a class 10 licensee, to purchase, acquire, or sell liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

(q) Any provision to the contrary notwithstanding, at the discretion of the county liquor commission, permission may be granted to a bona fide hotel, restaurant, or club licensed under class 2, class 6, class 11, class 12, or class 14 to allow a patron to remove from the licensed premises any portion of wine that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. This subsection applies only to a valid holder of a class 2, class 6, class 11, class 12, or class 14 license engaged in meal service.

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13.” (r) Sections 281-57 to 281-61 shall not apply to classes 7 through 10 and

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 25, 2002.)

## ACT 50

H.B. NO. 2282

A Bill for an Act Relating to Agreements to Arbitrate Made Before July 1, 2002.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 658A-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This chapter governs an agreement to arbitrate made before July 1, 2002, if all the parties to the agreement or to the arbitration proceeding so agree in a record. If the parties to the agreement or to the arbitration do not so agree in a record, an agreement to arbitrate that is made before July 1, 2002, shall be governed by the law specified in the agreement to arbitrate or, if none is specified, by the state law in effect on the date when the arbitration began or on June 30, 2002, whichever first occurred.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved April 25, 2002.)

## ACT 51

H.B. NO. 2507

A Bill for an Act Relating to Registration of Divorces and Annulments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 338-29, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 3. This Act shall take effect on January 1, 2003.

(Approved April 25, 2002.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 52

S.B. NO. 2094

A Bill for an Act Relating to Health Insurance Reimbursement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii's Prompt Payment law went into effect on July 1, 2000. Since then physicians have been confused over the notice requirement in the law, mistakenly confusing the notification letter of additional time needed as a denial of payment for services.

The purpose of this Act is to simplify the administrative costs and burdens associated with Act 99, Session Laws of Hawaii 1999, and to eliminate confusion and reduce the cost of complying with the law for both health plans and physicians. A further purpose of this Act is to make permanent the provisions of Act 99.

SECTION 2. Act 99, Session Laws of Hawaii 1999, is amended by amending section 5 to read as follows:

~~“SECTION 5. This Act shall take effect on July 1, 2000[, and shall be repealed on July 1, 2002; provided that section 478-8(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2000].”~~

SECTION 3. Section 431:13-108, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§431:13-108[H] Reimbursement for health insurance benefits.** (a) This section applies to accident and sickness insurance providers under part I of article 10A of chapter 431, mutual benefit societies under article I of chapter 432, dental service corporations under chapter 423, and health maintenance organizations under chapter 432D.

(b) Unless shorter payment timeframes are otherwise specified in a contract, an entity shall reimburse a claim that is not contested or denied not more than thirty calendar days after receiving the claim filed in writing, or fifteen calendar days after receiving the claim filed electronically, as appropriate.

(c) If a claim is contested or denied or requires more time for review by an entity, the entity shall notify the health care provider in writing or electronically not more than fifteen calendar days after receiving a claim filed in writing, or not more than seven calendar days after receiving a claim filed electronically, as appropriate. The notice shall identify the contested portion of the claim and the specific reason for contesting or denying the claim, and may request additional information[-]; provided that a notice shall not be required if the entity provides a reimbursement report containing the information, at least monthly, to the provider.

(d) Every entity shall implement and make accessible to providers a system that provides verification of enrollee eligibility under plans offered by the entity.

~~[(d)]~~ (e) If information received pursuant to a request for additional information is satisfactory to warrant paying the claim, the claim shall be paid not more than thirty calendar days after receiving the additional information in writing, or not more than ~~[seven]~~ fifteen calendar days after receiving the additional information filed electronically, as appropriate.

~~[(e)]~~ (f) Payment of a claim under this section shall be effective upon the date of the postmark of the mailing of the payment, or the date of the electronic transfer of the payment, as applicable.

~~[(f)]~~ (g) Notwithstanding section 478-2 to the contrary, interest shall be allowed at a rate of fifteen per cent a year for money owed by an entity on payment of a claim exceeding the applicable time limitations under this section, as follows:

- (1) For an uncontested claim:
  - (A) Filed in writing, interest from the first calendar day after the thirty-day period in subsection (b); or
  - (B) Filed electronically, interest from the first calendar day after the fifteen-day period in subsection (b);
- (2) For a contested claim filed in writing:
  - (A) For which notice was provided under subsection (c), interest from the first calendar day thirty days after the date the additional information is received; or
  - (B) For which notice was not provided within the time specified under subsection (c), interest from the first calendar day after the claim is received; or
- (3) For a contested claim filed electronically:
  - (A) For which notice was provided under subsection (c), interest from the first calendar day fifteen days after the additional information is received; or
  - (B) For which notice was not provided within the time specified under subsection (c), interest from the first calendar day after the claim is received.

The commissioner may suspend the accrual of interest if the commissioner determines that the entity's failure to pay a claim within the applicable time limitations was the result of a major disaster or of an unanticipated major computer system failure.

~~(g)~~ (h) Any interest that accrues in a sum of at least \$2 on a delayed clean claim in this section shall be automatically added by the entity to the amount of the unpaid claim due the provider.

~~(h)~~ (i) In determining the penalties under section 431:13-201 for a violation of this section, the commissioner shall consider:

- (1) The appropriateness of the penalty in relation to the financial resources and good faith of the entity;
- (2) The gravity of the violation;
- (3) The history of the entity for previous similar violations;
- (4) The economic benefit to be derived by the entity and the economic impact upon the health care facility or health care provider resulting from the violation; and
- (5) Any other relevant factors bearing upon the violation.

~~(i)~~ (j) As used in this section:

"Claim" means any claim, bill, or request for payment for all or any portion of health care services provided by a health care provider of services submitted by an individual or pursuant to a contract or agreement with an entity~~[-], using the entity's standard claim form with all required fields completed with correct and complete information.~~

"Clean claim" means a claim in which the information in the possession of an entity adequately indicates that:

- (1) The claim is for a covered health care service provided by an eligible health care provider to a covered person under the contract;
- (2) The claim has no material defect or impropriety;
- (3) There is no dispute regarding the amount claimed; and
- (4) The payer has no reason to believe that the claim was submitted fraudulently.

The term does not include:

- (1) Claims for payment of expenses incurred during a period of time when premiums were delinquent;

- (2) Claims that are submitted fraudulently or that are based upon material misrepresentations;
- (3) Medicaid or Medigap claims; and
- (4) Claims that require a coordination of benefits, subrogation, or preexisting condition investigations, or that involve third-party liability.

“Contest”, “contesting”, or “contested” means the circumstances under which an entity was not provided with, or did not have reasonable access to, sufficient information needed to determine payment liability or basis for payment of the claim.

“Deny”, “denying”, or “denied” means the assertion by an entity that it has no liability to pay a claim based upon eligibility of the patient, coverage of a service, medical necessity of a service, liability of another payer, or other grounds.

“Entity” means accident and sickness insurance providers under part I of article 10A of chapter 431, mutual benefit societies under article 1 of chapter 432, dental service corporations under chapter 423, and health maintenance organizations under chapter 432D.

“Health care facility” shall have the same meaning as in section 327D-2.

“Health care provider” means a Hawaii health care facility, physician, nurse, or any other provider of health care services covered by an entity.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 30, 2002.

(Approved April 25, 2002.)

## ACT 53

S.B. NO. 2681

A Bill for an Act Relating to Public Works.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 464-4, Hawaii Revised Statutes, is amended to read as follows:

**“§464-4 Public works.** ~~[The State and the political subdivisions thereof and the officers thereof, respectively, shall not engage in the construction of any public work involving professional engineering, architecture, or landscape architecture for which the plans, specifications, and estimates have not been made nor supervised by and the construction of which is not observed by a professional engineer, architect, or landscape architect duly licensed hereunder; provided that nothing in this section shall apply to any public work involving professional engineering, architecture, or landscape architecture wherein the expenditure therefor does not exceed the sum of \$15,000.]~~ (a) Notwithstanding any other provision to the contrary, public works projects involving:

(1) Alteration or new construction shall be required to have:

(A) Plans or specifications prepared by or under the supervision of an appropriately licensed professional engineer, architect, or landscape architect. The licensed professional engineer, architect, or landscape architect, as the case may be, shall stamp the plans or specifications, and indicate that the licensee has prepared or supervised the preparation of the plans or specifications; and



- (B) A licensed professional engineer, architect, or landscape architect designated by the State, county, or political subdivision that is undertaking the public works project to observe the alteration or new construction. For the observation of construction of these types of public works projects, the licensed professional engineer, architect, or landscape architect, as the case may be, shall not be required to stamp the plans or specifications.
- (2) Maintenance work shall:
  - (A) Not be required to have plans or specifications prepared by or under the supervision of an appropriately licensed professional engineer, architect, or landscape architect; and
  - (B) Be required to have a licensed professional engineer, architect, or landscape architect designated by the State, county, or political subdivision that is undertaking the public works project to observe the maintenance work. For the observation of construction of this type of public works project, the licensed professional engineer, architect, or landscape architect, as the case may be, shall not be required to stamp the plans or specifications.
- (b) All land surveys involving property boundaries for public purposes or plans thereof shall be made or supervised by a licensed<sup>1</sup> surveyor. The licensed land surveyor shall stamp the land surveys or plans, and indicate that the licensee has prepared or supervised the preparation of the land surveys or plans.
- (c) For purposes of this section:
  - “Maintenance” means minor repairs or replacement work which do not affect or involve the structural integrity of the public works project.
  - “Public works projects” means projects undertaken by the State, counties, or any political subdivisions thereof.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2002.)

**Note**

- 1. Prior to amendment “land” appeared here.

**ACT 54**

S.B. NO. 2769

A Bill for an Act Relating to Mental Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 334-106, Hawaii Revised Statutes, is amended to read as follows:

**“§334-106 License or accreditation required.** Facilities operated pursuant to this part shall be licensed under existing licensing categories, including provisional licenses, or accredited pursuant to section 321-193(10). Facilities operated pursuant to section 334-103(1) or (2) to provide services to mentally ill adults shall be licensed, including provisional licenses. Facilities operated to provide services to mentally ill adults pursuant to section 334-103(3) or (4) shall be accredited rather than licensed. The director shall review the appropriateness of these licensing and

accreditation categories. If the director determines that new licensing or accreditation categories are necessary, the director shall issue a report and recommendation to the legislature.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2002.)

## ACT 55

H.B. NO. 57

A Bill for an Act Relating to Agriculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to extend the time in which privately-funded industrial hemp research can be conducted in Hawaii.

SECTION 2. Act 305, Session Laws of Hawaii 1999, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect upon its approval, and shall be repealed on June 30, [2002:] 2005.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon June 29, 2002.

(Approved April 26, 2002.)

## ACT 56

H.B. NO. 2232

A Bill for an Act Relating to the Whistleblowers’ Protection Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. According to the joint senate-house investigative committee to investigate the State’s efforts to comply with the *Felix* consent decree, many people were reluctant to publicly share information on specific incidents of abuse and waste for fear of possible retaliation. Despite reports of threats to witnesses and potential testifiers, people did brave this climate of fear to come forward with their concerns.

The legislature finds that public bodies, including legislative investigating committees which examine reports of alleged fraud, abuse, and waste, should not have to rely solely on the bravery of certain people to make government more effective and efficient. The Whistleblowers’ Protection Act, chapter 378, Hawaii Revised Statutes, needs to be strengthened to protect the brave, fortify the meek, and expose the scurrilous.

SECTION 2. Section 378-62, Hawaii Revised Statutes, is amended to read as follows:

**“[§378-62] Discharge of, threats to, or discrimination against employee for reporting violations of law.** An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because:

- (1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of [-a]:
  - (A) A law [or], rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States[.]; or
  - (B) A contract executed by the State, a political subdivision of the State, or the United States,
 unless the employee knows that the report is false; or
- (2) An employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.”

SECTION 3. Section 378-63, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, or actual damages, or both within ~~[ninety days]~~ two years after the occurrence of the alleged violation of this part.”

SECTION 4. Section 378-65, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person who violates this part shall be fined not less than \$500 nor more than \$500 \$5,000 for each violation.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 26, 2002.)

## ACT 57

S.B. NO. 2881

A Bill for an Act Relating to Elderly Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the chronically ill and disabled elderly are often in need of a variety of long-term care services including medical services, rehabilitation therapy, psychosocial counseling, transportation, meals, personal care, and grooming. In addition, the frail elderly and their families are often caught in a labyrinth of application forms, frequent physician visits, endless phone calls, and inquiries to obtain appropriate services that can meet the different health and social needs of the frail elderly. Dealing with multiple agencies and deciphering

their costs and eligibility requirements are formidable tasks and add to family stress and frustration, which may lead to compromising the continuity of care for the elderly person.

The outcome of such a fragmented long-term care system and the limited scope of services is that the frail individual usually must make do with what can be obtained in the community or be prematurely placed in an institution such as a nursing home. The legislature, as well as families, finds this to be not only costly and inadequate, but also undesirable. Moreover, nursing home placements are expensive because of the high costs of constructing and operating such facilities.

As the elderly population rapidly increases, especially with the “baby boomers” reaching age sixty-five starting from the year 2011, the legislature recognizes the need for a more comprehensive, community-based program that prevents institutionalization and contains long-term care costs. To meet this need, the 1991 legislature established a demonstration project at Maluhia Hospital known as the program for all-inclusive care for the elderly (PACE).

The legislature finds that PACE provides a complete package of services that enhances the quality of life for the program’s elderly participants. In addition, PACE addresses the problems of fragmented and costly long-term care by meeting the needs of Hawaii’s families who are struggling to maintain frail elderly individuals in their own homes to avoid institutionalization. The legislature further finds that PACE costs less than what Medicare, Medicaid, and private individuals currently pay for long-term care.

Recognizing the overall success of similar projects nationwide, Congress passed the “Balanced Budget Act of 1997,” which established PACE as a permanent type of provider under Medicare and allows states the option to pay for PACE services under Medicaid. Hawaii’s PACE program at Maluhia, along with other PACE sites throughout the country, are now seeking this permanent provider status under Medicare and being included into their respective Medicaid’s state plan as a benefit for eligible clients. Maluhia’s PACE demonstration status will continue until June 30, 2005, to provide the necessary transition period into the new permanent status granted by the federal agency and for the program to be included as an amendment in the state plan.

The purpose of this Act is to extend the PACE demonstration project at Maluhia as it awaits its federal approval from the Centers for Medicare and Medicaid Services, formerly known as the Health Care Financing and Administration, to become a permanent provider as established by Congress.

SECTION 2. Act 211, Session Laws of Hawaii 1992, as amended by Act 338, Session Laws of Hawaii 1997, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect on July 1, 1992, and shall be repealed on June 30, [2002.] 2005.”

SECTION 3. Act 338, Session Laws of Hawaii 1997, section 3, is amended to read as follows:

“SECTION 3. (a) The PACE program shall submit a program description and a financial and management report to the legislature.

The program description and the financial and management report shall contain:

- (1) A description of the scope of services;
- (2) Eligibility criteria for provided services;
- (3) An evaluation documenting the quality of care and health outcomes as measured by standards upheld by the department of health’s [hospital and medical facilities branch,] office of health care assurance branch,

and as defined by ~~[medicare-or]~~ Medicare and ~~[medicaid]~~ Medicaid licensing requirements under the department of human service's<sup>1</sup> ~~[community long term care branch]~~ adult and community care services branch, and by the ~~[National]~~ national PACE standards, which include data on hospitalization and nursing home<sup>2</sup> placement rates, activities of<sup>3</sup> daily living, and satisfaction rates of patients and families;

- (4) An assessment of the State's exposure to liability including:
  - ~~[(i)]~~ (A) A financial measurement of the State's obligation to provide care to all participants through the termination of all care contracts;
  - ~~[(ii)]~~ (B) A comparison of the amount computed in ~~[(i)]~~ (A) to the charge to clients approved or estimated to be approved by the ~~[Health Care Financing Administration;]~~ Centers for Medicare and Medicaid Services; and
  - ~~[(iii)]~~ (C) An explanation of all assumptions used to develop the assessment.

The assessment is an extension of paragraph (9) for the evaluation of the future viability of this project by consideration of all relevant costs, including overhead, facilities and housing costs, fringe benefits and payroll taxes, financing, and the cost of pass through services from other sectors of government;

- (5) Census data from PACE's inception covering:
    - (A) Number of patients enrolled in<sup>4</sup> the past five years;
    - (B) Average number of patients enrolled per month; and
    - (C) Expected growth;
  - (6) Costs to:
    - (A) Participants; and
    - (B) Medicaid;
  - (7) A description of the financing structure for the program, including an analysis of the adequacy of the reserve for future care costs;
  - (8) Documentation of the number of full time equivalent employee<sup>5</sup> and the patient-staff ratio; and
  - (9) The total cost of the PACE program including:
    - (A) The State's total contribution on an annual basis;
    - (B) Expenditures by cost categories;
    - (C) Cost per patient per month based on all state and ~~[medicaid]~~ Medicaid funding; and
    - (D) Presentation of revenue and expenses, including disclosure of the provision for future care costs by year.
- (b) The PACE program shall address these issues and report its findings to the legislature no later than twenty days before the convening of the regular session of 1998, 1999, 2000, 2001, 2002, ~~[and]~~ 2003[-], 2004, and 2005."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2002.

(Approved April 26, 2002.)

#### Notes

- 1. Prior to amendment "services's" appeared here. "Service's" should be underscored.
- 2. Prior to amendment "homes" appeared here. "Home" should be underscored.
- 3. Prior to amendment "on" appeared here. "Of" should be underscored.
- 4. Prior to amendment "for" appeared here. "In" should be underscored.
- 5. Prior to amendment "employees" appeared here. "Employee" should be underscored.

## ACT 58

H.B. NO. 2167

A Bill for an Act Relating to Traffic Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The traffic enforcement demonstration project originally authorized by Act 234, Session Laws of Hawaii 1998, as amended by Act 263, Session Laws of Hawaii 1999, and Act 240, Session Laws of Hawaii 2000, began operations in December, 2001. The system has caused numerous disruptions to drivers and pedestrians in the State, and the legislature finds that the photo traffic enforcement system should be discontinued as soon as possible so that further review of the system can occur.

The purpose of this Act is to repeal the law authorizing use of a photo traffic enforcement system, and to reenact all provisions of the Hawaii Revised Statutes in the manner they read prior to being amended to accommodate the photo traffic enforcement system.

SECTION 2. Act 234, Session Laws of Hawaii 1998, Act 263, Session Laws of Hawaii 1999, and Act 240, Session Laws of Hawaii 2000 are repealed. Sections 286-45, 286-172(a), 291C-38(c), 291C-163(a), 291C-165(b), and 291C-223, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1998.

SECTION 3. This Act does not affect citations or summonses that were issued, penalties that were incurred, or proceedings that were begun before its effective date.

SECTION 4. As soon as is legally possible following the effective date of this Act, the state department of transportation shall terminate all contracts with private entities for the provision of photo traffic enforcement services under Act 234, Session Laws of Hawaii 1998, Act 263, Session Laws of Hawaii 1999, or Act 240, Session Laws of Hawaii 2000.

SECTION 5. All moneys in the photo enforcement revolving fund established by Act 234, Session Laws of Hawaii 1998, section 17B, as added by Act 240, Session Laws of Hawaii 2000, section 7, as of the effective date of this Act shall be transferred to the general fund of the State; provided that all funds received on or after the effective date of this Act as a result of photo traffic citations or summonses issued prior to the effective date of this Act that would have been deposited into the photo enforcement revolving fund shall be deposited into the general fund.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 30, 2002.)

**Note**

(Became law on April 30, 2002, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Unattended Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 290-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other provision of this chapter, any vehicle left unattended on private or public property without authorization of the owner or occupant of the property, may be towed away at the expense of the owner of the vehicle, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall state [where] that the vehicle will be towed and held[:] at the expense of the vehicle owner, as well as the name, address, and a telephone number of the facility where the vehicle will be towed and held. The notice shall be of such size and be placed in a location [reasonably calculated to call the sign to the attention of potential parkers:] that is clearly visible to the driver of a vehicle approaching any individual marked or unmarked parking space; provided that where an entire parking lot consists of restricted parking spaces, placement of the notice at each entrance of the parking lot shall suffice.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

A Bill for an Act Relating to the Hawaii State Emergency Response Commission.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the University of Hawaii school of public health was closed after the loss of its accreditation. It was replaced by a new department of public health sciences and epidemiology, located in the John A. Burns school of medicine.

At the November 17, 2000, meeting of the Hawaii state emergency response commission, members approved a change in membership to replace the dean of the University of Hawaii school of public health with the dean of the University of Hawaii John A. Burns school of medicine.

The purpose of this Act is to amend chapter 128E, Hawaii Revised Statutes, to reflect the change in membership of the commission. If the school of public health is reaccredited, this Act allows the governor to reappoint the dean of that school in lieu of the dean of the medical school.

SECTION 2. Section 128E-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commission shall consist of the following members, who shall be appointed by the governor as provided in section 26-34:

(1) The director of health;

- (2) The chairperson of the board of agriculture;
- (3) The adjutant general;
- (4) The director of labor and industrial relations;
- (5) The chairperson of the board of land and natural resources;
- (6) The director of the office of environmental quality control;
- (7) The director of business, economic development, and tourism;
- (8) The director of transportation;
- (9) The dean of the University of Hawaii school of public health[;] or the dean of the University of Hawaii school of medicine, as determined by the governor;
- (10) The director of the environmental center of the University of Hawaii;
- (11) One representative from each committee designated by the mayor of each respective county; and
- (12) Other persons appointed by the governor to meet the minimum requirements of the Emergency Planning and Community Right-to-Know Act of 1986.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved May 23, 2002.)

## ACT 61

H.B. NO. 2009

A Bill for an Act Relating to Agriculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

Section 1. Chapter 150A, Hawaii Revised Statutes, is amended by amending its title to read as follows:

### **“PLANT AND NON-DOMESTIC ANIMAL QUARANTINE AND MICROORGANISM IMPORT”**

SECTION 2. Section 150A-6.3, Hawaii Revised Statutes, is amended to read as follows:

**“§150A-6.3 Microorganism import.** (a) The board shall maintain:

- (1) A list of nonrestricted microorganisms allowed entry into the State without a permit;
- (2) A list of restricted microorganisms that require a permit for import into the State and possession; and
- (3) A list of microorganisms that are select human pathogens allowed entry into the State without a permit but that require the department to notify the department of health of entry for the purpose of possible department of health inspection and monitoring.

Import of a microorganism on these lists, as well as import of any unlisted microorganism, shall be subject to the notification, labeling, and inspection requirements of section 150A-5, and is allowed only as provided herein.

(b) Import of a microorganism on the restricted list of microorganisms shall be by permit issued pursuant to rules and subject to conditions established by rules;



provided that, if the department in its discretion determines that import of a microorganism on the restricted list or the microorganism's proposed use presents a high risk to agriculture, horticulture, the environment, or animal or public health, the import request shall be subject to advisory committee review and board approval, including a determination that the importer is able to comply with conditions established by the board, before a permit may be issued.

(c) Import and possession of an unlisted microorganism may be allowed based on the department's determination of the level of risk presented by the import, including its proposed use, to agriculture, horticulture, the environment, or animal or public health. Import shall be either by letter of authorization or special permit issued by the department, without advisory committee review or board approval, or, alternatively, by special permit issued by the department subsequent to advisory committee review and board approval, according to risk level as provided by rule; provided that in the latter instance the importer is able to comply with conditions established by the board.

(d) The department may issue an emergency permit on a case-by-case basis to a state or federal agency or state university to allow import and possession of a microorganism on the list of restricted microorganisms or an unlisted microorganism for the purpose of remediating any emergency or disaster affecting agriculture, horticulture, the environment, [or] animal or public health[;], or for emergency preparedness; provided that:

- (1) The board, without advisory committee review, first obtains advice from qualified persons with relevant expertise;
- (2) The board determines that import in less time than is required for issuance of a special permit under subsections (b) and (c) as applicable, is necessary to remediate the emergency or disaster; and
- (3) The importer is able to meet conditions established by the board.

(e) Microbial products may be imported as follows:

- (1) Microbial products containing certain strains of microorganisms on the nonrestricted list of microorganisms, as identified by rule, may enter the State without a permit but shall not be imported without a registration issued pursuant to rules. Import of an unregistered microbial product required to be registered with the department is a violation of this section; and
- (2) Import of microbial products other than those products required to be registered pursuant to paragraph (1) shall be by permit or letter of authorization, as provided in subsections (b) and (c) as applicable.

(f) Permits issued under rules adopted prior to Act 211, Session Laws of Hawaii 2000, are valid until the expiration date shown on the permit with no entitlement to renewal on the original import terms and conditions. Upon expiration of those permits, continued import is subject to reapplication and satisfaction of requirements under rules adopted to implement this section.

(g) The board may amend conditions in permits, letters of authorization, and registrations, or cancel permits, letters of authorization, and registrations, as necessary, if the board determines that the classification of the microorganism being imported or the conditions attendant to the microorganism's import and use must be changed due to newly discovered risks to agriculture, horticulture, the environment, or animal or public health."

SECTION 3. Section 150A-6.4, Hawaii Revised Statutes, is amended to read as follows:

**"§150A-6.4 Permit and other import document issuance; requirements.**

Except as otherwise provided in this part, all permits, letters of authorization, or

registrations referenced in sections 150A-6 through 150A-6.3 shall be issued pursuant to rules. Any violation of conditions listed on the permits, letters of authorization, or registrations shall be a violation of this chapter.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

## ACT 62

H.B. NO. 2307

A Bill for an Act Relating to Electronic Transactions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 489E-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§489E-11]]~~ **Notarization [and], certification, acknowledgment[,], and verification.** If a law requires a signature or record to be notarized, certified, acknowledged, verified, or made under oath~~[;]~~ or seal, the requirement is satisfied if the electronic signature or seal of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

## ACT 63

H.B. NO. 2365

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that article VII, section 6, of the constitution of the State of Hawaii requires the legislature to provide a tax refund or tax credit when certain factors are met. The legislature finds that these factors have been met and that the legislature is constitutionally required to provide a tax credit or tax refund.

The purpose of this Act is to provide for an income tax credit of \$1 multiplied by the number of the taxpayer’s qualified exemptions to every resident, individual taxpayer of the State to satisfy constitutionally mandated requirements.

SECTION 2. (a) There shall be allowed each resident individual taxpayer, who files an individual income tax return for the taxable year 2002, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer

for federal or Hawaii state individual income tax purposes, a general income tax credit of \$1 that shall be deducted from income tax liability computed under chapter 235, Hawaii Revised Statutes; provided that a resident individual who has no income or no income taxable under chapter 235, Hawaii Revised Statutes, and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes may claim this credit.

Each resident individual taxpayer may claim the general income tax credit multiplied by the number of qualified exemptions to which the taxpayer is entitled.

Each person for whom the general income tax credit is claimed shall have been a resident of the State, as defined in section 235-1, Hawaii Revised Statutes, for at least nine months regardless of whether the qualified resident was physically in the State for nine months.

Multiple exemptions shall not be granted for the general income tax credit because of age or deficiencies in vision, hearing, or other disability.

The general income tax credit shall not be available to:

- (1) Any person who has been convicted of a felony and who has been committed to prison and has been physically confined for the full taxable year;
- (2) Any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or
- (3) Any misdemeanor who has been committed to jail and has been physically confined for the full taxable year.

The tax credit claimed by a resident taxpayer pursuant to this Act shall be deductible from the resident taxpayer's individual income tax liability for the taxable year 2002. If the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that a tax credit properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual.

All claims for tax credits under this Act, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with this filing requirement shall constitute a waiver of the right to claim the credit.

(b) This section implements the provisions of article VII, section 6, of the constitution of the State of Hawaii, enacted by the 1978 constitutional convention, which reads as follows:

### **“DISPOSITION OF EXCESS REVENUES**

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law.”

**SECTION 3.** This Act shall take effect upon its approval.

(Approved May 23, 2002.)

A Bill for an Act Relating to Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Presently, all residents of state-funded elderly public housing projects and privately owned projects assisted by the State must be sixty-two years of age or older. Although this narrowly defined requirement helps to preserve the intent of elder only housing, it prohibits elderly households with relatively younger spouses or co-tenants from being able to reside in the projects and places a burden on renting units, particularly in privately owned elderly housing. Additionally, the sixty-two years of age requirement precludes mature adults who have disabilities but who have not reached the age of sixty-two from accessing housing opportunities in elderly housing projects. As such, more flexibility is needed to address the housing needs of the elderly and persons with disabilities.

The purpose of this Act is to expand affordable rental housing opportunities for the elderly in state-funded elderly public housing projects and privately owned projects that are assisted by the housing and community development corporation of Hawaii with state or federal resources if at least one person in the household is at least sixty-two years of age. This Act is also intended to increase affordable rental housing opportunities for persons with disabilities.

SECTION 2. Section 201G-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“‘Elder or elderly households’ means households in which at least one member is sixty-two years of age, the spouse or partner has attained the age of majority, and the remaining members have attained the age of fifty-five years at the time of application to the project. A live-in aide shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder.

“Elder or elderly housing” means:

- (1) A housing project intended for and occupied by elder or elderly households; or
- (2) Housing provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elder or elderly persons, or if the Secretary makes a determination, the project may also be occupied by persons with disabilities who have reached the age of majority.

“Live-in aide” means a person who:

- (1) Is eighteen years of age or older;
- (2) Is living in the unit solely to assist the elder or elderly person in daily living activities including bathing, meal preparation and delivery, medicinal care, transportation, and physical activities;
- (3) Is not legally obligated to support the elder or elderly person; and
- (4) Is verified by the corporation as meeting these requirements.”

SECTION 3. Section 201G-1, Hawaii Revised Statutes, is amended by amending the definition of “elder” to read as follows:

“‘Elder’ or ‘elderly’ means a person who is a resident of the State and has attained the age of sixty-two years.”

SECTION 4. Section 201G-152, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-152 Resident selection: dwelling accommodations; rentals.** In the administration of ~~[housing projects for the elderly,]~~ elder or elderly housing, the corporation shall observe the following with regard to resident selection, dwelling accommodations, and rentals:

- (1) Except as hereinafter provided, it shall accept ~~[only elders]~~ elder or elderly households as residents in the housing projects;
- (2) It may accept<sup>1</sup> residents in any housing unit one or more persons, related or unrelated by marriage. It may also accept as a resident in any dwelling accommodation or in any project, in the case of illness or other disability of an elder who is a resident in the dwelling accommodation or in the project, a person designated by the elder as the elder's ~~[companion and who is approved]~~ live-in aide whose qualifications as a live-in aide are verified by the corporation, although the person is not an elder; provided that the person shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder;
- (3) It may rent or lease to an elder a dwelling accommodation consisting of any number of rooms as the corporation deems necessary or advisable to provide safe and sanitary accommodations to the proposed resident or residents ~~[thereof]~~ without overcrowding; and
- (4) Notwithstanding that the elder has no written rental agreement or that it has expired, so long as the elder continues to tender the usual rent to the corporation or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the elder, nor shall the corporation otherwise cause the elder to quit the dwelling unit involuntarily, demand an increase in rent from the elder, or decrease the services to which the elder has been entitled during hospitalization of the elder due to illness or other disability.”

SECTION 5. Section 201G-151, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval, and shall apply to all existing state-funded elderly housing projects or privately owned projects that are assisted by the housing and community development corporation of Hawaii with state or federal resources.

(Approved May 23, 2002.)

#### Notes

1. Prior to amendment “as” appeared here.
2. Edited pursuant to HRS §23G-16.5.

## ACT 65

H.B. NO. 2478

A Bill for an Act Relating to Employment Status of Personnel of the Hawaii National Guard Youth Challenge Academy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of the Act is to both exempt and exclude positions of the Hawaii National Guard Youth Challenge Academy from civil service and

collective bargaining to enable the Department of Defense to more effectively manage the wage constraints imposed by the federal government and the Master Youth Cooperative Agreement.

SECTION 2. The legislature finds that the Master Youth Cooperative Agreement constrains the manner in which Youth Challenge positions can be managed under civil service and collective bargaining requirements. The unique provisions specified by the federal government in the Master Youth Cooperative Agreement establish manning models with salary limitations based on the federal salary scale. Such limitations generate conflicts between the salary limitations imposed by the Master Youth Cooperative Agreement and the negotiated collective bargaining contracts covering included employees hired under the Youth Challenge Academy. The pay of certain included employees was found to have exceeded the salary limitations imposed by the Master Youth Cooperative Agreement. Moreover, personnel of the Youth Challenge Academy should be exempt from civil service on a permanent basis, because the program is no longer a pilot program. Therefore, section 76-16(12), Hawaii Revised Statutes, no longer provides an appropriate base to exempt Youth Challenge Academy personnel from civil service.

SECTION 3. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative direc-

tor of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);

- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, and alternative school project coordinators in the department of education; the special assistant to the state librarian, one secretary for the special assistant to the state librarian, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
- (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
- (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in

- charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director or<sup>1</sup> transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
  - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
  - (19) Household employees at the official residence of the president of the University of Hawaii;
  - (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than<sup>1</sup> half-time basis;
  - (21) Employees hired under the tenant hire program of the housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation shall be hired under the tenant hire program;
  - (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
  - (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
  - (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution.<sup>1</sup>
  - (25) Sheriff, first deputy sheriff, and second deputy sheriff; [and]
  - (26) A gender and other fairness coordinator hired by the judiciary[-]; and
  - (27) Positions in the Hawaii national guard youth challenge academy.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 4. Section 89-6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

- (1) Elected or appointed official;
- (2) Member of any board or commission;
- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
- (4) Secretary to top-level managerial and administrative personnel under paragraph (3);



- (5) Individual concerned with confidential matters affecting employee-employer relations;
- (6) Part-time employee working less than twenty hours per week, except part-time employees included in unit (5);
- (7) Temporary employee of three months' duration or less;
- (8) Employee of the executive office of the governor or a household employee at Washington Place;
- (9) Employee of the executive office of the lieutenant governor;
- (10) Employee of the executive office of the mayor;
- (11) Staff of the legislative branch of the State;
- (12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
- (13) Any commissioned and enlisted personnel of the Hawaii national guard;
- (14) Inmate, kokua, patient, ward or student of a state institution;
- (15) Student help; [or]
- (16) Staff of the Hawaii labor relations board[:]; or
- (17) Employees of the Hawaii national guard youth challenge academy."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 2, 2002.

(Approved May 23, 2002.)

**Note**

1. So in original.

**ACT 66**

H.B. NO. 2481

A Bill for an Act Relating to Civil Service Exemptions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;

- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, and alternative school project coordinators in the department of education; the special assistant to the state librarian, one secretary for the special assistant to the state librarian, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through

federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;

- (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
- (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during [lunch] meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff; and
- (26) A gender and other fairness coordinator hired by the judiciary.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved May 23, 2002.)

**ACT 67****H.B. NO. 2501**

A Bill for an Act Relating to the Appropriation for State Employee Benefit Programs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 259, Session Laws of Hawaii 2001, by item K-23 of section 3, appropriated \$19,830,591 to the department of human resources development for workforce attraction, selection, classification and effectiveness (HRD 102) for fiscal year 2001-2002. Section 82 of Act 259 allocated \$4,933,726 for paying any claims against the State as required under chapter 386, Hawaii Revised Statutes, for fiscal year 2001-2002. Section 83 of Act 259 allocated \$2,221,620 for unemployment compensation claims of former state employees for fiscal year 2001-2002.

A critical funding emergency exists. The state workers' compensation fund will be exhausted by approximately March 31, 2002, and the department will not be able to meet its fiscal obligation to provide for the health and welfare of state employees.

The purpose of this Act is to amend sections 82 and 83 of Act 259, Session Laws of Hawaii 2001, by increasing the amount allocated to worker's compensation by \$1,000,000 and reducing the amount allocated to unemployment insurance by \$1,000,000 for fiscal year 2001-2002 only. The amendment will allow the State to meet its fiscal obligation to provide for the health and welfare of state employees and will not affect the State's ability to meet its unemployment insurance obligations according to the department of human resources development's projections. The total moneys appropriated to HRD 102 will remain the same for fiscal year 2001-2002.

SECTION 2. Act 259, Session Laws of Hawaii 2001, is amended by amending section 82 to read as follows:

“SECTION 82. Provided that of the general fund appropriation for work force attraction, selection, classification, and effectiveness (HRD 102), the sum of [\$4,933,726] \$5,933,726 for fiscal year 2001-2002, and the sum of \$4,933,726 for fiscal year 2002-2003, shall be expended for workers' compensation claims; and provided further that the department of human resources development shall submit a detailed report of all expenditures and number of claims for workers' compensation claim payments to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.”

SECTION 3. Act 259, Session Laws of Hawaii 2001, is amended by amending section 83 to read as follows:

“SECTION 83. Provided that of the general fund appropriation for work force attraction, selection, classification, and effectiveness (HRD 102), the sum of

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~~[\$2,221,620]~~ \$1,221,620 for fiscal year 2001-2002, and the sum of \$2,221,620 for fiscal year 2002-2003, shall be expended for unemployment compensation claims of former state employees; provided further that any unrequired and unencumbered funds shall be lapsed to the general fund; and provided further that the department of human resources development shall submit a detailed report of all expenditures and number of claims for unemployment compensation claim payments to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

## ACT 68

H.B. NO. 2554

A Bill for an Act Relating to Noncommercial Piers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 261, Session Laws of Hawaii 2000, is amended by amending section 1 to read as follows:

“SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§171- Private [residential] noncommercial piers.** Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, state submerged lands or lands beneath tidal waters for private [residential] noncommercial piers on such terms and conditions as may be prescribed by the board.””

SECTION 2. Act 261, Session Laws of Hawaii 2000, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that the authority granted to the department of land and natural resources to enter into lease agreements with owners of private [residential] noncommercial piers shall be repealed on June 30, 2005, and the amendments made by sections 1, 2, and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of that date and sections 171-36(a) and 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act; provided further that any lease agreement executed pursuant to this Act prior to June 30, 2005, or any lease extension executed thereon after the repeal of this Act, shall remain exempt from section 171-36(a)(9), Hawaii Revised Statutes, after the repeal of this Act.”

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

## ACT 69

H.B. NO. 2556

A Bill for an Act Relating to Section 13 of Act 15, Third Special Session Laws of Hawaii 2001.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 15, Third Special Session Laws of Hawaii 2001, is amended by amending section 13 to read as follows:

“SECTION 13. This Act shall take effect upon its approval and shall be repealed on April 30, 2002[.]; provided that section 171-13, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on April 29, 2002.

(Approved May 23, 2002.)

## ACT 70

H.B. NO. 2582

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-234, Hawaii Revised Statutes, is amended to read as follows:

“**§286-234 Employer responsibilities.** (a) Each employer shall require the applicant to provide the information specified in section 286-233.

(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle [~~during any period~~]:

- (1) [~~In~~] During any period in which the driver has a driver’s license or permit suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; [øø]
- (2) [~~In~~] During any period in which the driver has more than one driver’s license[.];
- (3) During any period in which the driver, or the commercial motor vehicle the driver is driving, or the motor carrier operation, is subject to an out-of-service order; or
- (4) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.

(c) Any employer who violates subsection (a) or (b)(1) or (2) shall for a first conviction be fined not more than \$100; for conviction of a second offense committed within one year after the date of the prior conviction, the employer shall be fined not more than \$300; for conviction of a third or subsequent offense committed within two years after the date of the second conviction, the employer shall be fined not more than \$1,000.

~~[(d) No employer shall knowingly allow, permit, or authorize any individual to drive a commercial motor vehicle during any period in which the employee, the motor vehicle, or the motor carrier operation is subject to an out-of-service order.~~

~~(e)] (d) Any employer who is convicted of a violation of subsection [(d)] (b)(3) shall be subject to a fine of not less than [\$2,500] \$2,750 nor more than [\$10,000.] \$11,000.~~

~~(e) Any employer who is convicted of a violation of subsection (b)(4) shall be subject to a civil penalty of not more than \$10,000."~~

SECTION 2. Section 286-240, Hawaii Revised Statutes, is amended to read as follows:

**"§286-240 Disqualification and cancellation.** (a) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- (1) Driving a commercial motor vehicle under the influence of alcohol, a controlled substance, or any drug which impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver's blood is 0.04 per cent or more by weight;
- (3) Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle;
- (4) Using a commercial motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the commercial motor vehicle driven by the person; or
- (6) Unlawful transportation, possession, or use of a controlled substance while on-duty time.

(b) A person is disqualified for a period of not less than three years for any conviction of a violation of any offense listed in subsection (a) that is committed while a hazardous material required to be placarded is being transported.

(c) A person is disqualified from driving a commercial motor vehicle for life if convicted two or more times for violations of any of the offenses listed in subsection (a). ~~[Only offenses committed after April 1, 1991, may be considered in applying this subsection.]~~

(d) A person is disqualified from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(f) A person is disqualified from driving a commercial motor vehicle or from resubmitting an application for a period of not less than sixty days, if the examiner of drivers finds that a commercial driver's license holder or applicant for a commercial driver's license has falsified information or failed to report or disclose required information either before or after issuance of a commercial driver's license.

(g) A person is disqualified from driving a commercial motor vehicle for a period of not less than ninety days and not more than one year for a first violation, or for at least one year and not more than five years for a second violation, or at least three years and not more than five years for a third or subsequent violation of an out-of-service order committed in a commercial motor vehicle arising from separate incidents occurring within a ten-year period.

(h) A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred eighty days or more than two years for a first violation, or for at least three years and not more than five years for any subsequent violation, of an out-of-service order committed in a commercial motor vehicle transporting hazardous materials or designed to transport sixteen or more occupants, arising from separate incidents occurring within a ten-year period.

(i) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of a first violation, not less than one hundred twenty days if convicted of a second violation during any three-year period, or not less than one year if convicted of a third or subsequent violation during any three-year period for a violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing:

- (1) For all drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
- (2) For all drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
- (3) For all drivers who are always required to stop, failing to stop before driving onto the crossing;
- (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
- (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or
- (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

## ACT 71

S.B. NO. 2632

A Bill for an Act Relating to Arrests.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 803-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If a person fails to appear in answer to the citation; or if there is reasonable cause to believe that the person will not appear, a warrant for the person’s arrest may be issued. [Wilful] A knowing failure to appear in answer to the citation may be punished by a fine of not more than [\$100] \$1,000 or imprisonment of not more than 30 days or both.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



SECTION 4. This Act shall take effect on July 1, 2002.

(Approved May 23, 2002.)

ACT 72

S.B. NO. 2693

A Bill for an Act Relating to Child Support Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-37.1, Hawaii Revised Statutes, is amended to read as follows:

**“§346-37.1 Payment of public assistance for child [constitutes debt] requires payment of child support to department by natural or adoptive parents.** (a) Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents who are responsible for support of such children ~~[in an amount equal to the amount of public assistance money so paid or as established pursuant to subsection (b).]~~ except that debts under this section shall not be incurred by a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status, and, provided that where there has been a family court order, the debt shall be limited to the amount provided for by the order.

(b) If there is no existing court order, the debt for a period during which public assistance was provided to the child or children may be established by agreement of the parties or ~~[by order of the family court wherein the following criteria shall be considered:~~

- ~~(1) All earnings, income, and resources of the absent parent or parents including real or personal property;~~
- ~~(2) The earnings potential, reasonable necessities, and borrowing ability of the absent parent or parents;~~
- ~~(3) The needs of the child for whom the support is sought;~~
- ~~(4) The amount of assistance which would be paid to the child under the full standard of need as established by the department; and~~
- ~~(5) The existence of other dependents.~~

These criteria shall be applied so as to ensure, at a minimum, that the child for whom support is sought benefits from the income and resources of the absent parent or parents on an equitable basis in comparison with any other minor child of the absent parent.] application of the child support guidelines established pursuant to section 576D-7.”

SECTION 2. Section 346-37.3, Hawaii Revised Statutes, is amended to read as follows:

**“§346-37.3 Notice of child support debt.** The department shall notify the child support enforcement agency of ~~[each support debt accrued or accruing based upon payment of]~~ the amount of, and the periods during which, public assistance was provided to or for the benefit of any dependent child or children.”

SECTION 3. Section 576D-1, Hawaii Revised Statutes, is amended by repealing the definition of “public assistance debt”.

~~["“Public assistance debt” means a debt owing to the department of human services under section 346-37.1.”]~~

SECTION 4. Section 576D-8, Hawaii Revised Statutes, is amended to read as follows:

**“§576D-8 [Moneys collected for public assistance debt; transmittal] Transmittal of money collected to department of human services.** The moneys collected by the agency on behalf of the department of human services ~~[for public assistance debt]~~ shall be transmitted to the department of human services~~[-The department of human services shall transmit to the federal government that portion of the moneys required to be transmitted under Title IV-D. The remaining portion of the moneys collected, with the exception of incentive payments or other monetary performance awards to which the State is entitled under Title IV-D, shall be retained by the department of human services to offset Title IV-A public assistance payments.]~~ as required by Title IV-D of the Social Security Act.”

SECTION 5. Section 576D-10, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) No alternative arrangement for direct payment shall be approved where the obligor or the custodial parent is receiving services under Title IV-D or where the dependents of the obligor receive public assistance, including but not limited to public assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or where the obligor owes [a public assistance debt.] child support for a period during which public assistance was provided to the child or children by the department of human services.”

SECTION 6. Section 576D-10.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[Whenever the dependents of the obligor receive public assistance moneys, the child support enforcement agency or its designated counsel may establish the public assistance debt through an appropriate judicial or administrative proceeding.]~~ Upon the establishment of [the public assistance debt,] an order of support for a prior period, a lien shall arise on the obligor’s real and personal property and the obligor’s real and personal property shall be subject to foreclosure, distraint, seizure, and sale, or notice to withhold and deliver, which shall be executed in accordance with this section or applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.”

SECTION 7. Section 576D-10.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every order or judgment regarding child support ~~[or public assistance debt]~~ filed in judicial or administrative proceedings in this State shall be recorded in the bureau of conveyances. An order or judgment regarding child support filed in judicial or administrative proceedings of any other state may be recorded in the bureau of conveyances. This recorded lien shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. The statutory lien becomes effective when it arises under subsection (a) or (b) and shall attach to all interests in real or personal property then owned or subsequently acquired by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.”

SECTION 8. Section 576E-1, Hawaii Revised Statutes, is amended by repealing the definition of “public assistance debt”.<sup>1</sup>

[~~““Debt means the public assistance debt as described in section 346-37.1.””]~~

SECTION 9. Section 576E-2, Hawaii Revised Statutes, is amended to read as follows:

**“§576E-2 Attorney general; powers.** Notwithstanding any other law to the contrary, the attorney general, through the agency and the office, shall have concurrent jurisdiction with the court in all proceedings in which a support obligation is established, modified, or enforced, including but not limited to proceedings under chapters 571, 580, 584, and 576B. The attorney general, through the agency and the office, may establish, modify, suspend, terminate, and enforce child support obligations and collect or enforce spousal support using the administrative process provided in this chapter on all cases for which the department has a responsibility under Title IV-D of the Social Security Act, including but not limited to welfare and nonwelfare cases in which the responsible parent is subject to the department’s jurisdiction, regardless of the residence of the children for whom support is sought. These powers shall include but not be limited to the power to:

- (1) Conduct investigations into the ability of parties to pay support and into nonpayment of support;
- (2) Administer oaths, issue subpoenas, and require production of books, accounts, documents, and evidence;
- (3) Establish, modify, suspend, terminate, or enforce a child support order and to collect or enforce a spousal support order in conjunction with a child support order;
- (4) Determine that a party has not complied with a court or administrative order of support and make recommendations to the court or other agency with respect to contempt or other appropriate proceedings;
- (5) Establish arrearage;
- (6) Establish ~~[a public assistance debt under section 346-37.1;]~~ an order for child support for periods which public assistance was provided to the child or children by the department of human services;
- (7) Order and enforce assignment of future income under section 576E-16, chapter 571, and section 576D-14;
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order of support issued by another state or foreign jurisdiction, except as modified or limited by this chapter;
- (9) Determine that an obligor owes past-due support with respect to a child receiving assistance under a state program funded under Title IV-A of the Social Security Act, including Aid to Families with Dependent Children and Temporary Assistance to Needy Families and petition the court to issue an order that requires the obligor to pay such support in accordance with a plan approved by the court or, if the obligor is subject to such a plan and is not incapacitated, participate in work activities, as defined in 42 U.S.C. §607(d), as the court deems appropriate;
- (10) Order genetic testing pursuant to chapter 584 for the purpose of establishing paternity, with payment of costs to be made by the agency, subject to recoupment by the State from the father or the mother, if appropriate, if paternity is established, and to also order additional

testing in any case if an original test result is contested, upon request and advance payment by the contestant;

- (11) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order of support issued by another state or foreign jurisdiction, except as modified or limited by this chapter and chapter 576B; and
- (12) Delegate the powers and authority described in this section to hearings officers and employees of the agency."

SECTION 10. Section 576E-11, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-11 Administrative orders; required findings.** Every order entered pursuant to this chapter shall specify, where applicable, the following:

- (1) The amount of periodic support to be paid by a party with directions as to the manner of payment;
- (2) The amount of child support arrearage, if any, that has accrued under an existing court or administrative order;
- (3) The amount of ~~[public assistance debt, if any, accrued under section 346-37.1;]~~ child support owed for a period during which public assistance was provided to the child or children by the department of human services;
- (4) ~~The amount of the periodic payment to be made in liquidation of [such public assistance debt, if any, or]~~ child support arrearage, if any;
- (5) A statement that a party's taxes shall be set off against the amount of ~~[such public assistance debt, if any, or]~~ child support arrearage, if any;
- (6) The extent of the party's responsibility to provide medical insurance coverage of<sup>2</sup> the dependent child involved in the case, or otherwise to pay the reasonable and necessary medical expenses of the dependent child;
- (7) The name and birth date of the dependent child;
- (8) A statement that the property of the party is subject to collection action, including but not limited to, withholding of income, unemployment compensation, workers' compensation, and retirement benefits, seizure of property, disclosure of information relating to the party's debts to consumer credit reporting agencies, and federal and state tax refund setoff;
- (9) A statement that violations of the administrative order are punishable as contempt of court;
- (10) A statement notifying the parties of the right to judicial review of administrative orders, and the procedure for obtaining such review; and
- (11) Identifying information for each party, including social security number, residential and mailing addresses, telephone number, driver's license number if different from the social security number, and name, address, and telephone number of the party's employer, unless there is a finding that such disclosure of information would unreasonably put at risk the health, safety, or liberty of a party or child."

SECTION 11. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever an administrative order is entered establishing, modifying, or enforcing support, or establishing an arrearage that has accrued under a previous judicial or administrative order ~~[for] of support, [or establishing a public assistance debt,]~~ there shall concurrently be issued an order that shall operate as an assignment

to the agency for the benefit of the child or in the case of spousal support, for the benefit of a spouse or former spouse, of such amounts at such times as may be specified in the order, from the responsible parent's income due or to become due in the future from the responsible parent's employer, or successor employers, except when alternative arrangements are ordered pursuant to section 576D-10. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. A copy of the income withholding order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued along with the copy of the support order as provided in section 576E-12."

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

**Notes**

1. Repealed definition of "debt".
2. Prior to amendment "for" appeared here. "Of" should be underscored.

**ACT 73**

S.B. NO. 2705

A Bill for an Act Relating to the Housing and Community Development Corporation of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend section 201G-57(d), Hawaii Revised Statutes, so that it is consistent with section 91-14, Hawaii Revised Statutes, which requires an agency to transmit the record of a contested case proceeding to the court within twenty days after the contents of the record have been determined.

SECTION 2. Section 201G-57, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Within [~~fifteen~~] twenty days after the determination of the contents of the record on appeal in the manner provided by the rules of court, or within further time as the court may allow, the corporation shall transmit to the reviewing court the record of the proceeding under review. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

## ACT 74

H.B. NO. 1761

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The economic impacts of the tragic events of September 11, 2001, have profoundly affected Hawaii. The effects on the State's economy have been immediate. Hawaii businesses have experienced enormous revenue losses due to decreases in the number of visitors to Hawaii and troop deployments. The nation has been warned to expect that the war on terrorism will continue and that losses can be expected to continue until consumer confidence is restored. In this environment, state support for the business community and workers is imperative.

This Act will assist the state economy by stabilizing health insurance, a significant fixed cost borne by Hawaii employers and employees. This Act proposes to regulate health insurance rates to protect the public interest and to help ensure that health insurance rates are not excessive, inadequate, or unfairly discriminatory in a manner similar to the way that motor vehicle, workers' compensation, homeowners', and other property and casualty insurance lines are presently regulated. Also, this Act assures that rates will not be confiscatory or predatory.

Rate regulation of other lines of insurance, such as motor vehicle, homeowners', and workers' compensation, has resulted in premium decreases over the past five years, while unregulated health insurance rates have risen over the same period. Rate regulation ensures that rates are not excessive, thereby protecting employers and employees from unduly burdensome and unwarranted premium increases. Rate regulation also ensures that rates are adequate to promote the long-term viability of health care plans and are actuarially prudent, while preventing predatory pricing.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE  
HEALTH INSURANCE RATE REGULATION**

**§431: -101 Scope and purpose.** (a) This article shall apply to all types of health insurance offered by managed care plans.

(b) The purpose of this article is to promote the public welfare by regulating health insurance rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory. Nothing in this article is intended to:

- (1) Prohibit or discourage reasonable competition; or
- (2) Prohibit or encourage, except to the extent necessary to accomplish the aforementioned purposes, uniformity in insurance rates, rating systems, rating plans, or practices.

This article shall be liberally interpreted to carry into effect this section.

**§431: -102 Definitions.** As used in this article:

“Commissioner” means the insurance commissioner.

“Enrollee” means a person who enters into a contractual relationship or who is provided with health care services or benefits through a managed care plan.

“Managed care plan” or “plan” means a health plan as defined in chapter 431:10A, 432, or 432D, regardless of form, offered or administered by a health care insurer, including, but not limited to, a mutual benefit society or a health maintenance organization, mutual benefit societies of employee organizations, or voluntary

employee beneficiary associations, but shall not include disability insurers licensed under chapter 431.

“Rate” means every rate, charge, classification, schedule, practice, or rule. The definition of “rate” shall exclude fees and fee schedules paid by the insurer to providers of services covered under the Act.

“Supplementary rating information” includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rates in effect or to be in effect.

“Supporting information” means:

- (1) The experience and judgment of the filer and the experience or data of other organizations relied on by the filer;
- (2) The interpretation of any other data relied upon by the filer; and
- (3) Descriptions of methods used in making the rates and any other information required by the commissioner to be filed.

**§431: -103 Making of rates.** (a) Rates shall not be excessive, inadequate, or unfairly discriminatory and shall be reasonable in relation to benefits provided.

(b) Except to the extent necessary to meet the provisions of subsection (a), uniformity among managed care plans in any matters within the scope of this section shall be neither required nor prohibited.

**§431: -104 Rate adjustment mandates.** (a) Except as otherwise provided by law, the commissioner may mandate filings for health insurance under section 431: -105 when the commissioner has actuarially sound information that current rates may be excessive, inadequate, or unfairly discriminatory.

(b) Managed care plans shall submit the rate filings within one hundred twenty days of the commissioner’s mandate.

(c) The rate filings shall be subject to the rate filing requirements under section 431: -105.

**§431: -105 Rate filings.** (a) Every managed care plan shall file in triplicate with the commissioner, every rate, charge, classification, schedule, practice, or rule and every modification of any of the foregoing which it proposes to use. Every filing shall state its proposed effective date and shall indicate the character and extent of the coverage contemplated. The filing also shall include a report on investment income.

(b) Each filing shall be accompanied by a \$50 fee payable to the commissioner, which fee shall be deposited in the commissioner’s education and training fund.

(c) At the same time as the filing of the rate, every managed care plan shall file all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The managed care plan may satisfy its obligation to file supplementary rating and supporting information by reference to material which has been approved by the commissioner. The information furnished in support of a filing may include or consist of a reference to:

- (1) Its interpretation of any statistical data upon which it relies;
- (2) The experience of other managed care plans; or
- (3) Any other relevant factors.

(d) When a filing is not accompanied by supporting information or the commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, the commissioner shall require the managed care plan to furnish additional information and, in that event, the waiting period shall commence as of the date the information is furnished. Until the requested informa-

tion is provided, the filing shall not be deemed complete or filed and the filing shall not be used by the managed care plan. If the requested information is not provided within a reasonable time period, the filing may be returned to the managed care plan as not filed and not available for use.

(e) Except for a rate filed in accordance with subsection (i), or a filing in whole or in part that the commissioner orders to be held confidential and exempt from public disclosure, a filing and any supporting information shall be open to public inspection upon filing with the commissioner.

(f) After reviewing a managed care plan's filing, the commissioner may require that the managed care plan's rates be based upon the managed care plan's own loss and expense information.

(g) The commissioner shall review filings promptly after they have been made to determine whether they meet the requirements of this article. The commissioner shall calculate the investment income and accuracy of loss reserves upon which filings are based, and the managed care plan shall provide the information necessary to make the calculation.

(h) Except as provided herein and in subsection (d), each filing shall be on file for a waiting period of ninety days before the filing becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice, within the waiting period to the managed care plan that made the filing, that the commissioner needs the additional time for the consideration of the filing. Upon written application by the managed care plan, the commissioner may authorize a filing, which the commissioner has reviewed, to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof. The rates shall be deemed to meet the requirements of this article until the time the commissioner reviews the filing and so long as the filing remains in effect.

(i) The commissioner, by written order, may suspend or modify the requirement of filing as to any class of health insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. The order shall be made known to the affected managed care plan. The commissioner may make examinations that the commissioner deems advisable to ascertain whether any rates affected by the order meet the standards set forth in section 431: -103.

(j) No managed care plan shall make or issue a contract or policy except in accordance with filings which are in effect for the managed care plan as provided in this article.

(k) The commissioner may make the following rate effective when filed: any special filing with respect to any class of health insurance, subdivision, or combination thereof which is subject to individual risk premium modification and has been agreed to under a formal or informal bid process.

(l) For managed care plans having annual premium revenues of less than \$10,000,000, the commissioner may adopt rules and procedures that will provide the commissioner with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the managed care plan and its enrollees.

(m) All managed care plans shall file initial rates within thirty days of the effective date of this article. These rates shall be in effect until approved by the commissioner. The time limits set forth in this article for the commissioner's review of rates shall not apply to the commissioner's review of initial rates; provided that the commissioner shall review the initial rates within a reasonable period.

**§431: -106 Reserves.** (a) If a managed care plan's net worth exceeds fifty per cent of its annual health care expenditures and operating expenses as reported on



the most recent financial statement filed with the commissioner, the excess moneys shall either:

- (1) Be returned to enrollees of the managed care plan; or
- (2) Be applied to stabilize or reduce rates, charges, assessments, subscriptions, receipts, contributions, fees, or dues payable by the enrollees of the managed care plan.

(b) Excess moneys applied in accordance with subsection (a)(2) shall be reallocated among all lines of health insurance business sold by the managed care plan. Reallocation of moneys pursuant to this section may be delayed until the amount of moneys available to be reallocated exceeds \$10,000,000. Nothing in this section shall prohibit a managed care plan from maintaining reserves above minimum requirements but below the maximum limit or from returning moneys to, or reducing moneys payable by, enrollees of the managed care plan prior to reaching the maximum limit.

(c) Nothing in this section shall be construed to alter or eliminate the minimum reserve requirements applicable to the managed care plan. In the event of a conflict, the minimum reserve requirements shall control.

(d) Eighty per cent of all investment income on the reserves net of investment manager fees shall be applied to the rate determination and filing of the managed care plan. This requirement may be waived or adjusted by the commissioner if the commissioner determines it would impair the minimum reserve requirements or solvency of the managed care plan.

**§431: -107 Policy revisions that alter coverage.** All plan revisions that alter coverage in any manner shall be filed with the commissioner. After review by the commissioner, the commissioner shall determine whether a rate filing for the plan revision must be submitted in accordance with section 431: -105.

**§431: -108 Disapproval of filings.** (a) If within the waiting period or any extension of the waiting period as provided in section 431: -105, the commissioner finds that a filing does not meet the requirements of this article, the commissioner shall send to the managed care plan which made the filing, written notice of disapproval of the filing specifying in what respects the filing fails to meet the requirements of this article and stating that the filing shall not become effective.

(b) Whenever a managed care plan has no legally effective rates as a result of the commissioner's disapproval of rates or other act, interim rates shall be established as follows:

- (1) In the event a filing is disapproved, in whole or in part, a petition and demand for a contested case hearing may be filed in accordance with chapter 91. The managed care plan shall have the burden of proving that the disapproval is not justified. While the action of the commissioner in disapproving the rate filing is being challenged, the aggrieved managed care plan shall charge the rates established or the filed rates, whichever is lower; or
- (2) In the event a filing is approved, a contested case hearing in accordance with chapter 91 may be convened pursuant to subsection (c) to determine if the approved rates comply with the requirements of this article. If an appeal is taken from the commissioner's approval or if subsequent to the approval the commissioner convenes a hearing pursuant to subsection (c), the filing of the appeal or the commissioner's notice of hearing shall not stay the implementation of the rates approved by the commissioner, or the rates currently in effect, whichever is higher;
- (3) The commissioner may waive or modify the requirements of paragraph (1) or (2) if the application of those paragraphs will endanger the

financial solvency of the managed care plan or the welfare of its enrollees. The commissioner may also order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner may order the escrowed funds or any change in interim rates to be refunded or allow the managed care plan to exact a surcharge on premiums, whichever applies.

(c) If at any time subsequent to the applicable review period provided for in section 431: -105, the commissioner finds that a filing does not comply with the requirements of this article, the commissioner shall order a hearing upon the filing. The hearing shall be held upon not less than ten days' written notice to every managed care plan that made such a filing. The notice shall specify the matters to be considered at the hearing. If after a hearing the commissioner finds that a filing does not meet the requirements of this article, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to each managed care plan. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

- (d)(1) Any person or organization aggrieved with respect to any filing which is in effect may make written demand to the commissioner for a hearing thereon; provided that the managed care plan which made the filing shall not be authorized to proceed under this subsection;
- (2) The demand shall specify the grounds to be relied upon by the aggrieved person or organization and the demand must show that the person or organization has a specific economic interest affected by the filing;
- (3) If the commissioner finds that the demand is made in good faith, that the applicant would be so aggrieved if the person's or organization's grounds are established, and that the grounds otherwise justify a hearing, the commissioner, within thirty days after receipt of the demand, shall hold a hearing. The hearing shall be held upon not less than ten days' written notice to the aggrieved party and to every managed care plan which made the filing; and
- (4) If, after the hearing, the commissioner finds that the filing does not meet the requirements of this article, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements of this article, and stating when, within a reasonable period, the filing shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every such managed care plan. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(e) The notices, hearings, orders, and appeals referred to in this section, in all applicable respects, shall be subject to chapter 91, unless expressly provided otherwise.

**§431: -109 Managed care plans; prohibited activity.** (a) Except as permitted in this article, no managed care plan shall:

- (1) Attempt to monopolize, or combine or conspire with any other person to monopolize an insurance market; or
  - (2) Engage in a boycott, on a concerted basis, of an insurance market.
- (b) Except as permitted in this article, no managed care plan shall make any arrangement with any other person which has the purpose or effect of restraining

trade unreasonably or of substantially lessening competition in the business of insurance.

**§431: -110 Information to be furnished enrollees; hearings and appeals of enrollees.** Every managed care plan which makes its own rates, within a reasonable time after receiving written request therefor and upon payment of such reasonable charges as it may make, shall furnish to any enrollee affected by a rate made by it or to the authorized representative of the enrollee, all pertinent information as to the rate.

**§431: -111 False or misleading information.** No person or organization shall wilfully withhold information from or knowingly give false or misleading information to the commissioner, any statistical agency designated by the commissioner, or any managed care plan, which will affect the rates or premiums chargeable under this article. Violation of this section shall subject the one guilty of the violation to the penalties provided in section 431: -112.

**§431: -112 Penalties.** (a) If the commissioner finds that any person or organization has violated any provision of this article, the commissioner may impose a penalty of not more than \$500 for each violation; provided that if the commissioner finds the violation to be wilful, the commissioner may impose a penalty of not more than \$5,000 for each violation. The penalties may be in addition to any other penalty provided by law. For purposes of this section, any managed care plan using a rate for which the managed care plan has failed to file the rate, supplementary rating information, underwriting rules or guides, or supporting information as required by this article, shall have committed a separate violation for each day the failure to file continues.

(b) The commissioner may suspend the license or operating authority of any managed care plan that fails to comply with an order of the commissioner within the time limited by the order, or any extension thereof that the commissioner may grant. The commissioner shall not suspend the license of any managed care plan for failure to comply with an order until the time prescribed for an appeal from the order has expired or, if an appeal has been taken, until the order has been affirmed. The commissioner may determine when a suspension of license or operating authority shall become effective and it shall remain in effect for the period fixed by the commissioner unless the commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

(c) No penalty shall be imposed and no license or operating authority shall be suspended or revoked except upon a written order of the commissioner, stating the commissioner's findings, made after a hearing held upon not less than ten days' written notice to the person or organization. The notice shall specify the alleged violation.

**§431: -113 Hearing procedure and judicial review.** (a) Any managed care plan aggrieved by any order or decision of the commissioner made without a hearing, within thirty days after notice of the order to the managed care plan, may make written request to the commissioner for a hearing. The commissioner shall hold a hearing within twenty days after receipt of the request, and shall give not less than ten days' written notice of the time and place of the hearing. Within fifteen days after the hearing, the commissioner shall affirm, reverse, or modify the commissioner's previous action, specifying the reasons for the commissioner's decision. Pending the hearing and decision, the commissioner may suspend or postpone the effective date of the commissioner's previous action.

(b) Any final order or decision of the commissioner may be reviewed in the circuit court of the first circuit and an appeal from the decision of the court shall lie to the supreme court. The review shall be taken and had in the manner provided in chapter 91.”

SECTION 3. Section 432:1-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Article 2 [and], article 13, and article \_\_\_\_ of chapter 431, and the powers there granted to the commissioner, shall apply to managed care plans, health maintenance organizations, or medical indemnity or hospital service associations, which are owned or controlled by mutual benefit societies, so long as such application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.”

SECTION 4. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Article 2 [and], article 13, and article \_\_\_\_ of chapter 431, and the power there granted to the commissioner, shall apply to health maintenance organizations, so long as such application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1, 2003; provided that this Act shall be repealed on June 30, 2006.

(Approved May 31, 2002.)

## ACT 75

H.B. NO. 1950

A Bill for an Act Relating to Prescription Drugs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that prescription drugs have become unaffordable, especially for the elderly, disabled persons, and individuals on fixed incomes. The legislature is further aware that most drug companies offer low- or no-cost drugs for target groups. However, these programs are often inadequate in that they only offer certain drugs at minimal discount or require the individual to obtain reimbursement only after spending full price for the drug. The legislature further finds that other states have been successful in offering rebate programs without high cost to the users and residents of the state. The legislature agrees that it is necessary and appropriate to provide some relief for the high cost of prescription drugs by utilizing rebates and start-up general appropriations, for which reimbursement will be sought through pharmaceutical rebates and federal reimbursement programs.

The purpose of this Act is to establish a prescription drug expansion program under medicaid to make prescription drugs more affordable for those individuals whose income is at or below three hundred per cent of the federal poverty level.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§346- Medicaid prescription drug expansion program; medicaid prescription drug rebate special fund.** (a) The department shall provide for an expansion of prescription drug benefits under the medicaid program, which shall offer discounted prescription drugs to qualified individuals whose income is at or below three hundred per cent of the federal poverty level.

(b) There is established within the state treasury the medicaid prescription drug rebate special fund to be administered by the department, into which shall be deposited:

(1) All moneys received by the State as rebates from pharmaceutical manufacturers under the medicaid prescription drug expansion program; and

(2) Appropriations made by the legislature.

(c) Moneys in the medicaid prescription drug rebate special fund shall be used for the following purposes:

(1) Expanding medicaid prescription drug benefits; and

(2) Administering and operating the medicaid prescription drug expansion program.

(d) Upon dissolution of the medicaid prescription rebate special fund, any unencumbered moneys in the fund shall lapse to the general fund.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2002-2003 to be deposited into the medicaid prescription drug rebate special fund.

SECTION 4. There is appropriated out of the medicaid prescription drug rebate special fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the following purposes:

(1) Paying \$1 to a participating pharmacist under the medicaid program for each prescription written for a qualified individual; provided that:

(A) The department of human services obtains a waiver from the federal government to provide prescription drugs at medicaid rates to qualified individuals; and

(B) “Qualified individual” means an individual whose income is at or below three hundred per cent of the federal poverty level; and

(2) Administrative costs associated with the medicaid prescription drug expansion program, including salary and benefits of eight full-time equivalent employees and related operating costs including lease rent, equipment, consultant contracts, and contractual services of the medicaid pharmacy fiscal agent.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 5. The general funds appropriated in section 3 shall be reimbursed by the medicaid prescription drug rebate special fund by June 30, 2005, consistent with the fiscal resources of the fund and the best interests of the medicaid prescription drug expansion program.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

## Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 76

H.B. NO. 2834

A Bill for an Act Relating to Prescription Drugs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follow:

**“PART . HAWAII Rx PROGRAM**

**§346-A Definitions.** As used in this part:

“Administrator” means the director of human services.

“Department” means the department of human services.

“Manufacturer” means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.

“Program” means the Hawaii Rx program except as otherwise provided.

“Discount” means the amount by which the price of a drug sold by a pharmacy is reduced as determined by the department of human services.

**§346-B Hawaii Rx program.** There is established within the department, the Hawaii Rx program. The program will combine the purchasing power of all persons to reduce prescription drug costs for those in the group. The department may contract with a third party or third parties in accordance with chapter 103F to administer any single component, or combination of components of the program including outreach, eligibility, claims, administration, rebate recovery, and redistribution.

**§346-C Program eligibility.** (a) All residents of the State shall be eligible to participate in the Hawaii Rx program.

(b) The department:

- (1) Shall establish procedures for determining eligibility and shall issue program enrollment cards to eligible residents;
- (2) Shall undertake outreach efforts to build public awareness of the program and maximize the enrollment of eligible residents; and
- (3) May adjust the requirements and terms of the program by rule to accommodate any federally funded prescription drug program.

**§346-D Rebate agreement.** (a) Any prescription drug manufacturer that sells prescription drugs in the State may enter into a rebate agreement with the department for the Hawaii Rx access program. The rebate agreement shall require the manufacturer to make rebate payments to the State each calendar quarter or according to a schedule established by the department.

(b) The administrator shall negotiate the amount of the rebate required from a manufacturer.

**§346-E Nonparticipating manufacturers.** If the department and a drug manufacturer fail to reach agreement on the terms of a rebate, the department shall conduct a review of whether to place that manufacturer’s products on the prior

authorization list or formularies for the state medicaid program in accordance with this chapter. The department may release the names of manufacturers that do not enter into rebate agreements. This information shall be deemed public information. The department may also provide to doctors, pharmacists, and other health professionals information about the relative cost of drugs produced by manufacturers that enter into rebate agreements compared to the cost of drugs produced by those that do not enter into rebate agreements. The department shall adopt rules under chapter 91 creating procedures for the implementation of this section.

**§346-F Discounted retail prices for program participants.** (a) Each pharmacy participating in the Hawaii Rx program shall discount the price of drugs covered by the program and sold to program participants.

(b) The department shall establish discounts for drugs covered by a rebate agreement and shall promote the use of reduced-cost drugs, taking into consideration:

- (1) Reduced prices for state and federally capped drug programs;
- (2) Dispensing fees;
- (3) Administrative costs of the department; and
- (4) The average of all rebates provided pursuant to section 346-D, weighted by sales of drugs subject to those rebates over the most recent twelve-month period for which the information is available.

(c) In making a determination under this section, the administrator may rely on pricing information for a selected number of prescription drugs where the list of drugs selected is:

- (1) Representative of the prescription drug needs of the residents of the State; and
- (2) Made public.

(d) Beginning July 1, 2004, a participating pharmacy shall offer prescription drugs below the average wholesale price, plus a dispensing fee designated by the department. These initial price levels shall be calculated by the department and the dispensing fee shall not be less than that provided under the state medicaid program. The average wholesale price is the price on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally-recognized drug pricing file.

(e) No later than January 1, 2005, a participating pharmacy shall offer prescription drugs at or below the initial price levels specified in subsection (d), minus the amount of any discounts as calculated pursuant to subsections (b) and (c) to be paid by the State to the pharmacy.

**§346-G Pharmacy reimbursement.** (a) A pharmacy shall submit claims to the department to verify the amount charged to program participants. On a schedule to be determined by the department, the department shall reimburse each pharmacy for the discounts of prescription drugs provided to program participants.

(b) The department shall collect pharmacy use data necessary to calculate the amount of the manufacturer rebate under section 346-D. The department shall protect the confidentiality of information received as required under state or federal law, rule, or regulation.

**§346-H Hawaii Rx special fund.** (a) There is established within the state treasury, to be administered by the department, the Hawaii Rx special fund into which shall be deposited:

- (1) All moneys received from manufacturers who pay rebates as provided in section 346-D;
- (2) Appropriations made by the legislature to the fund; and
- (3) Any other revenues designated for the fund.

(b) Moneys in the Hawaii Rx special fund shall be used for the following purposes:

- (1) Reimbursement payments to pharmacies for discounts provided to program participants;
- (2) The cost of administering the Hawaii Rx program, including salary and benefits of employees, computer costs; and
- (3) Any other purpose deemed necessary by the department for the purpose of operating and administering the Hawaii Rx program.

All interest on special fund balances shall accrue to the special fund. Upon dissolution of the Hawaii Rx special fund, any unencumbered moneys in the fund shall lapse to the general fund.

**§346-J<sup>1</sup> Annual report.** The department shall report the enrollment and financial status of the Hawaii Rx program to the legislature no later than twenty days prior to the convening of each regular session, beginning with the 2005 regular session.”

**SECTION 2.** The administrator of the Hawaii Rx program shall use the administrator’s best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the medicaid program pursuant to title 42 United States Code section 1396r-8.

**SECTION 3.** In implementing this Act, the department of human services shall coordinate with other governmental programs and may take actions to enhance efficiency, reduce the cost of prescription drugs, and maximize the benefits of this and other governmental programs, including proposals to amend eligibility for the Hawaii Rx program to provide program benefits to the beneficiaries of other programs.

The department may seek waivers of federal law, rule, or regulation necessary to implement the provisions of this Act.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003, to develop a plan to implement the Hawaii Rx program. The plan shall include a description of how the program will operate, how the medicaid prescription drug expansion program will be integrated into the Hawaii Rx program or describe another appropriate design consistent with the goals of the Hawaii Rx program, recommend amendments to the enabling legislation, estimated funding required for start up and operational costs, and any other matters that effect the implementation of the program. The department shall report back to the Legislature regarding the plan no later than twenty days prior to the start of the regular session of 2004. The appropriation may be used to hire consultants to assist in the preparation of the Hawaii Rx program plan.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

**SECTION 5.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 6.** In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.



SECTION 7. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

**Note**

1. Should be “§346-1”.

**ACT 77**

S.B. NO. 2179

A Bill for an Act Relating to Energy Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I.**

SECTION 1. The legislature finds that gasoline is an energy resource, and that there is a need to ensure lower gasoline prices for Hawaii's consumers. Although gasoline prices have fallen to their lowest levels in years, and mainland consumers have been enjoying less expensive prices, there is evidence that Hawaii's consumers still continue to pay a large premium at the pump.

The legislature finds that the price of gasoline is a pivotal component in determining the future of the State's total energy situation. The cost of gasoline permeates every aspect of Hawaii's energy economy from the petroleum manufacturer to the gas station and finally to the ultimate payer, the people of Hawaii. As a result, no one in this State, resident or visitor, can escape the impact of the cost of gasoline.

The legislature has had long-standing and serious concerns over the high price of gasoline in the State of Hawaii, especially since prices in Hawaii have often been far in excess of the prices observed in other markets in the United States. In past hearings held by the legislature, the oil companies have represented that the market for gasoline in Hawaii was competitive, and that the high gasoline prices in Hawaii were attributable to the high cost of doing business in the State of Hawaii.

The legislature finds that the evidence obtained and developed in the State's antitrust lawsuit shows that the high cost of doing business in Hawaii has not been and is not the cause of the high gasoline prices. Rather, the evidence indicates among other matters, the following:

- (1) Retail gasoline prices in the State of Hawaii have been much higher than the prices observed in other oligopolistic and equally concentrated markets;
- (2) Retail gasoline prices in the State of Hawaii have exhibited far less volatility, as well as abnormal stability, in comparison to prices observed in other oligopolistic and equally concentrated markets; and
- (3) The major oil companies have been realizing profit margins far in excess of the margins realized in other oligopolistic and equally concentrated markets.

More recently, the oil companies have argued that high gasoline prices, high profit margins, and the lack of vigorous competition are the inevitable results of the oligopolistic structure of the Hawaii market.

In essence, the oil companies have now recognized that the structure of the Hawaii market is not one that will encourage competition. Rather, the structure of the market will perpetuate high and rising prices, supra-competitive margins, and a lack of competition.

The legislature finds that affirmative action is necessary to address the uncompetitive market, and that this action requires a multi-pronged response,

especially in light of the recent ruling issued by the United States District for the District of Hawaii in *Chevron U.S.A., Inc. v. Benjamin J. Cayetano, et al.*, Civil No. 97-00933 SCM, in which the court held that the lease rent cap statute in Act 257 passed by the legislature in 1997 was unconstitutional.

Accordingly, the purposes of this part are to:

- (1) Establish wholesale and retail gasoline price caps by:
  - (A) Requiring the public utilities commission to determine the maximum pre-tax wholesale price of regular unleaded gasoline, on a weekly basis;
  - (B) Prohibiting petroleum manufacturers or jobbers from selling regular unleaded gasoline to a dealer operated retail service station for more than the maximum pre-tax wholesale price;
  - (C) Requiring the public utilities commission to determine the maximum pre-tax retail price of regular unleaded gasoline, on a weekly basis;
  - (D) Prohibiting retailers from selling gasoline to the public for more than the maximum pre-tax retail price for regular unleaded gasoline sold on a self-serve basis;
  - (E) Giving the governor the power to suspend the operation of the wholesale and retail price caps whenever the governor determines that the operation of this law causes a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii. The suspension will be in effect until the June 30 of the year of the next succeeding regular session. If the legislature makes no change, the rate reverts to the previously established rate;
  - (F) Providing for a procedure to adjust the maximum prices; and
  - (G) Maintaining the lease rent cap for dealer operated retail stations;
- (2) Amend the Petroleum Industry Reporting Act to:
  - (A) Require, rather than allow, the department of business, economic development, and tourism to monitor the oil industry's profit margins in Hawaii and conduct random or periodic audits and inspections of oil suppliers;
  - (B) Substantially increase civil penalties for noncompliance;
  - (C) Require the department to refer intentional violations to the attorney general, who may exercise appropriate legal or equitable remedies available to the State; and
  - (D) Change references to the department and the director of business, economic development, and tourism in the Petroleum Industry Reporting Act to the "petroleum commissioner", who is to be the head of the department's energy, resources, and technology division;
- (3) Require the department of business, economic development, and tourism to:
  - (A) Review and analyze the unsealed documents in *Anzai v. Chevron et al.* (the recently settled gasoline antitrust litigation) and other appropriate materials;
  - (B) Gather and analyze empirical data to determine whether the Oil Price Information Service index or other appropriate benchmarks are applicable to Hawaii's markets;
  - (C) Review options available to the legislature, including wholesale and retail gasoline price caps and the potential effects of imposing price caps; and

- (D) Report findings and recommendations to the legislature before the convening of the 2003 regular session, including proposed implementing legislation, as appropriate;
- (4) Require the attorney general and the legislative reference bureau to assist the department by conducting legal and policy analyses, as appropriate, and in drafting legislation; and
- (5) Appropriate \$250,000 out of the public utilities commission special fund to the general fund, and appropriate the same amount to the department of business, economic development, and tourism to allow the department to contract with one or more petroleum experts to assist the department.

SECTION 2. Chapter 486H, Hawaii Revised Statutes, is amended as follows:

1. By adding three<sup>1</sup> new sections to be appropriately designated and to read as follows:

**“§486H-A Maximum pre-tax wholesale price for the sale of gasoline; civil actions.** (a) Notwithstanding any law to the contrary, no manufacturer, wholesaler, or jobber may sell regular unleaded gasoline to a dealer retail station, an independent retail station, or to another jobber or wholesaler at a price above the maximum pre-tax wholesale prices established pursuant to subsection (b). The commission shall publish the maximum pre-tax wholesale prices by means that shall include the internet website for the State of Hawaii.

(b) On a weekly basis, the commission shall determine the maximum pre-tax wholesale price of regular unleaded gasoline for each island as follows:

- (1) For the island of Oahu, the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the baseline price for regular unleaded gasoline, plus the location adjustment factor, and the marketing margin factor; and
- (2) For the islands of Kauai, Molokai, Lanai, Maui, and Hawaii, the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the maximum pre-tax wholesale price of regular unleaded gasoline for Oahu, plus the neighbor island wholesale adjustment factor.

(c) The baseline price for regular unleaded gasoline for Oahu referred to in subsection (b) shall be determined on a weekly basis, and shall be equal to the average of:

- (1) The spot pipeline daily price for regular unleaded gasoline for Los Angeles;
- (2) The spot pipeline daily price for regular unleaded gasoline for San Francisco; and
- (3) The spot daily price for the Pacific Northwest,

as reported and published by the Oil Price Information Service for the five business days of the preceding week.

(d) The location adjustment factor referred to in subsection (b) shall be \$.04 per gallon for the first year after the effective date of this section, and shall thereafter be subject to annual adjustment pursuant to section 486H-D(a).

(e) The marketing margin factor referred to in subsection (b) shall be \$.18 per gallon for the first year after the effective date of this section, and shall thereafter be subject to annual adjustment pursuant to section 486H-D(a).

(f) The neighbor island wholesale adjustment factor shall be the sum of the neighbor island location adjustment factor, plus the neighbor island marketing factor.

(g) The neighbor island location adjustment factor shall be \$.04 per gallon for the first year after the effective date of this section, and shall thereafter be subject to annual adjustment pursuant to section 486H-D(a).

(h) The neighbor island marketing factor shall be \$.04 per gallon for the first year after the effective date of this section, and shall thereafter be subject to annual adjustment pursuant to section 486H-D(a).

(i) Any manufacturer, wholesaler, or jobber who knowingly violates any requirement imposed or rule adopted under this section shall be subject to a civil penalty for each such violation, which penalty shall be three times the overcharge, or \$250,000, whichever is greater, and shall be liable for the costs of the action, and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and attorney's fees. In the case of ongoing violation, the two year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it deems appropriate. As used in this subsection, "overcharge" means the number of gallons of gasoline sold, times the wholesale price at which the manufacturer or jobber sold regular unleaded gasoline to a dealer retail station, less taxes assessed, less the maximum pre-tax wholesale price established pursuant to subsection (b).

(j) The commission shall have the power to determine the extent to which a manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted under this section, including the power to compel a manufacturer, wholesale, or jobber to submit documents, data and information necessary and appropriate for the commission to determine such compliance. The commission may use data collected by the department of business, economic development, and tourism pursuant to chapter 486J, as well as obtain the assistance of that department in determining such compliance.

(k) The commission shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.

**§486H-B Maximum pre-tax retail price for gasoline sold on a self-serve basis; civil actions.** (a) Notwithstanding any law to the contrary, no retail station may sell regular unleaded gasoline at retail, on a self-serve basis, at a price above the maximum pre-tax retail prices established pursuant to subsection (b). The commission shall publish the maximum pre-tax retail prices by means that shall include the internet website for the State of Hawaii. The commission may also publish the retail prices inclusive of all taxes.

(b) On a weekly basis, the commission shall determine the maximum pre-tax retail price of gasoline. The maximum pre-tax retail price for regular unleaded gasoline shall consist of the maximum pre-tax wholesale price for regular unleaded gasoline established pursuant to section 486H-A(b), plus a retail marketing margin factor.

(c) The retail marketing margin factor shall be \$.16 per gallon for the first year, and shall thereafter be subject to adjustment pursuant to section 486H-D(b).

(d) Any retail station that knowingly violates any requirement imposed or rule adopted under this section shall be subject to a civil penalty equal to three times the amount of the overcharge or \$25,000, whichever is greater, and shall be liable for the costs of the action, and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and the attorney's fees. In the case of ongoing violation, the two-year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it

deems appropriate. As used in this subsection, “overcharge” means the number of gallons of gasoline sold, times the retail price at which the retail station sold regular unleaded gasoline, less taxes assessed, less the maximum pre-tax retail price established pursuant to subsection (b).

(e) The commission shall have the power to determine the extent to which a retail station is complying with any requirement imposed or rule adopted under this section, including the power to compel a retail station to submit documents, data, and information necessary and appropriate for the commission to determine such compliance. The commission may use data collected by the department of business, economic development, and tourism pursuant to chapter 486J, as well as obtain the assistance of such department in determining such compliance.

(f) The commission shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.

**§486H-C Governor’s emergency powers.** (a) Notwithstanding any law to the contrary, the governor may suspend in whole or in part, section 486H-A, section 486H-B, or any rule adopted pursuant to those sections whenever the governor issues a written determination that strict compliance with any section or a rule will cause a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii. The governor shall publish this determination in accordance with section 1-28.5. The suspension shall take effect upon issuance of the written determination by the governor.

(b) Except as provided in subsection (c), the suspension under subsection (a) shall remain in effect until the earlier of:

- (1) The adjournment of the next regular or special session of the legislature; or
- (2) The effective date of any legislative enactment intended to address the major adverse impact;

provided that if the legislature has enacted legislation to address the major adverse impact, and the governor vetoes the legislation, the suspension shall terminate on the date of that veto, and the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after the date of the veto; and provided further that if no action is taken by the legislature during the regular or special session to address the major adverse impact, then the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after adjournment sine die of the regular or special session.

(c) If the written determination is issued while the legislature is in session, the suspension under subsection (a) shall remain in effect until the earlier of:

- (1) The adjournment of that session of the legislature; or
- (2) The effective date of any legislative enactment intended to address the major adverse impact;

provided that if the legislature has enacted legislation to address the major adverse impact, and the governor vetoes the legislation, the suspension shall terminate on the date of that veto, and the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after the date of the veto; and provided further that if no action is taken by the legislature during the regular or special session to address the major adverse impact, then the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after adjournment sine die of the regular or special session.

**§486H-D Adjustments.** (a) A manufacturer, wholesaler, or jobber may petition the commission to adjust the maximum pre-tax wholesale price of regular unleaded gasoline in the event of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, or the neighbor island wholesale adjustment factor. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustments shall be determined as follows:

- (1) The value of the baseline price shall be equal to the average of:
  - (A) The spot pipeline daily price for regular unleaded gasoline for Los Angeles;
  - (B) The spot pipeline daily price for regular unleaded gasoline for San Francisco; and
  - (C) The spot daily price for the Pacific Northwest, as reported and published by the Oil Price Information Service for the five business days of the preceding week;
- (2) The value of the location adjustment factor in effect at the time the petition is filed shall be adjusted to equal the average of the actual acquisition cost to non-refiner marketers to obtain gasoline from refiners or importers for sale on the island of Oahu over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agreements, or other similar agreements; provided that the location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Oahu. As used in this paragraph, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pays to a third party for delivery of such gasoline into a terminal located on the island of Oahu;
- (3) The value of the marketing margin factor in effect at the time the petition is filed shall be adjusted by adding to such value the difference between:
  - (A) The average of the difference over the prior twelve-month period between:
    - (i) The dealer tank wagon price for sales for resale; and
    - (ii) The bulk price for sales for resale, for PAD District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information; less
  - (B) The average of the difference over the period from 1994 until the most current year between:
    - (i) The dealer tank wagon price for sales for resale; and
    - (ii) The bulk price for sales for resale, for PAD District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information;
- (4) The value of the neighbor island location adjustment factor in effect at the time the petition is filed shall be adjusted to equal the actual acquisition cost to non-refiner marketers to obtain gasoline from a refiner or importer for sale on the island of Kauai, Molokai, Lanai, Maui, or Hawaii, over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agree-

ments, or other similar agreements; provided that the neighbor island location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Kauai, Molokai, Lanai, Maui, or Hawaii, from any port on the island of Oahu. As used in this subsection, “actual acquisition cost” means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pay to a third party for delivery of such gasoline into a terminal located on Kauai, Molokai, Lanai, Maui, or Hawaii; and

- (5) The value of the neighbor island marketing factor in effect at the time the petition is filed shall be adjusted if there are material changes in the cost factors associated with marketing gasoline on the island of Kauai, Molokai, Lanai, Maui, or Hawaii, such as terminaling, storage, or distribution costs.

(b) A retail station may petition the commission to adjust the maximum pre-tax retail price of gasoline in the event of a change in the maximum pre-tax wholesale price for regular unleaded gasoline, or the value of the retail marketing margin factor. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustment shall be determined as follows:

- (1) The value of the retail marketing margin factor for regular unleaded gasoline established in section 486H-B(c) shall be adjusted upward only if such value is less than the average of the difference over the prior twelve-month period between:

- (A) The “through retail outlets” price for sales to end users for regular unleaded gasoline; and

- (B) The dealer tank wagon price, for sales for resale for regular unleaded gasoline, for PAD District V, as reported and published by the Energy Information Administration or its successor in Table 31 - “Motor Gasoline Prices by Grade, Sales Type, PAD District, and State” or other source containing the same information.

(c) If the commission adjusts the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline, the commission shall publish its findings and the adjusted prices by means that shall include the internet website for the State of Hawaii.

(d) In its discretion and without a petition having been filed, the commission may adjust the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline if an adjustment is necessary as a result of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, the neighbor island wholesale adjustment factor, or the retail marketing margin factor.

(e) Nothing in section 486H-A or 486H-B shall be construed to prohibit the filing of a petition during the first year after the effective date of this section.”

2. By adding twelve new definitions to section 486H-1, Hawaii Revised Statutes, to be appropriately inserted and to read as follows:

““Commission” means the public utilities commission.

“Company retail station” means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that manufacturer or jobber.

“Dealer retail station” means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer other than a manufacturer or a jobber under a franchise.

“Independent retail station” means a retail service station not owned by a manufacturer or jobber and operated by a qualified gasoline dealer.

“Non-refiner marketer” means any person who acquires gasoline for sale in the State of Hawaii, and who is not a refiner located and operating in the State of Hawaii, nor an importer owned by or affiliated with, directly or indirectly, by a refiner located and operating in the State of Hawaii.

“Operate” means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.

“Other areas” means the second congressional district of the State.

“Pre-tax” when used in reference to a price means such price net of the fuel-related or other taxes assessed when the gasoline is sold.

“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.

“Retail station” means and includes a company retail station, a dealer retail station, and an independent retail station.

“Self-serve basis” means that the retail station allows customers to dispense gasoline into vehicles.

“Urban” means the first congressional district of the State.”

3. By amending section 486H-10.4, Hawaii Revised Statutes, to read as follows:

**“~~[[§486H-10.4]]~~ Restrictions on manufacturers or jobbers in operating service stations; lease rent controls; definitions.** (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer ~~[operated]~~ retail ~~[service]~~ station to a company ~~[operated]~~ retail ~~[service]~~ station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company operated retail service stations legally in existence on July 31, 1997;
- (2) Constructing and operating any new retail service stations as company ~~[operated]~~ retail ~~[service]~~ stations constructed after August 1, 1997, subject to subsection (b); or
- (3) Operating a former dealer ~~[operated]~~ retail ~~[service]~~ station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the service station, cancels the franchise, or is properly terminated or not renewed.

(b) No new company ~~[operated]~~ retail ~~[service]~~ station shall be located within one-eighth mile of a dealer ~~[operated]~~ retail ~~[service]~~ station in an urban area, and within one-quarter mile in other areas. ~~[For purposes of this subsection, “urban” means the first congressional district of the State, and “other areas” means the second congressional district of the State.]~~

(c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:

- (1) Such renewal shall not be scheduled more frequently than once every three years; and
- (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer operated retail service station as defined in section 486H-1 and 486H-10.4 plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase which the manufacturer or jobber is required to pay the lessor under the ground lease for the service station. For the purposes of this subsection, “gross



amount” means all monetary earnings of the dealer from a dealer operated retail service station after all applicable taxes, excluding income taxes, are paid.

The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.

(d) Nothing in this section shall prohibit a dealer from selling a retail service station in any manner.

~~[(e) For the purposes of this section:~~

~~“Company operated retail service station” means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that manufacturer or jobber.~~

~~“Dealer operated retail service station” means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer under a franchise.~~

~~“Operate” means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.~~

~~“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.]”~~

SECTION 3. Chapter 486J, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to section 486J-1, Hawaii Revised Statutes, to be appropriately inserted and to read as follows:

““Petroleum commissioner” or “commissioner” means the administrator of the energy, resources, and technology division of the department of business, economic development, and tourism.”

2. By amending section 486J-5, Hawaii Revised Statutes, to read as follows:

**“[~~§~~486J-5] Analysis of information; audits and inspections; summary reports.** (a) The ~~[department may,] petroleum commissioner,~~ with ~~[its] the commissioner’s~~ own staff and other support staff with expertise and experience in, or with, the petroleum industry, shall gather, analyze, and interpret the information submitted to it pursuant to sections 486J-3 and 486J-4 and other information relating to the supply and price of petroleum products, with particular emphasis on motor vehicle fuels, including, but not limited to, all of the following:

- (1) The nature, cause, and extent of any petroleum or petroleum products shortage or condition affecting supply;
- (2) The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply;
- (3) Petroleum or petroleum product demand and supply forecasting methodologies utilized by the petroleum industry in Hawaii;
- (4) The prices, with particular emphasis on wholesale and retail motor fuel prices, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in Hawaii and the reasons for such changes;
- (5) The income, expenses, and profits, both before and after taxes, of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price-earnings ratio;
- (6) The emerging trends relating to supply, demand, and conservation of petroleum and petroleum products;

- (7) The nature and extent of efforts of the petroleum industry to expand refinery capacity and to make acquisitions of additional supplies of petroleum and petroleum products; and
- (8) The development of a petroleum and petroleum products information system in a manner which will enable the State to take action to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply.

(b) The ~~[department may]~~ commissioner shall conduct random or periodic audits and inspections of any supplier or suppliers of oil or petroleum products to determine whether they are unnecessarily withholding supplies from the market or are violating applicable policies, laws, or rules. The ~~[department]~~ commissioner may solicit assistance of the department of taxation in any such audit. The ~~[department]~~ commissioner shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the ~~[department]~~ commissioner is not duplicative of the data received by any of their audits or inspections which is available to the ~~[department.]~~ commissioner.

(c) The ~~[department may]~~ commissioner shall analyze the impacts of state and federal policies, rules, and regulations upon the supply and pricing of petroleum products.

(d) The ~~[department]~~ commissioner shall publish annually and submit to the governor and the legislature twenty days prior to the first day of the current legislative session a summary, including any analysis and interpretation~~[-]~~ of the information submitted to it pursuant to this chapter~~[-]~~, and any other activities taken by the commissioner, including civil penalties imposed and referrals of violations to the attorney general under section 486J-9. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted. At the option of the director, this report may be combined with reporting required by section 196-4(11), in the director's role as state energy resources coordinator."

3. By amending section 486J-9, Hawaii Revised Statutes, to read as follows:

**"~~[[§486J-9]] Failure to timely provide information; failure to make and file statements; false statements; penalties[-]; referral to the attorney general.~~** (a) The ~~[department]~~ petroleum commissioner shall notify those persons who have failed to timely provide the information specified in section 486J-3 or 486J-4 or requested by the ~~[department]~~ commissioner under section 486J-3 or 486J-4. If, within five days after being notified of the failure to provide the specified or requested information, the person fails to supply the specified or requested information, the person shall be subject to a civil penalty of not less than ~~[\$500]~~ \$50,000 per day nor more than ~~[\$2,000]~~ \$100,000 per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the ~~[department]~~ commissioner regarding the information and the ~~[department]~~ commissioner has held a hearing and, following a ruling by the ~~[department,]~~ commissioner, the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) Any person who wilfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the ~~[department]~~ commissioner shall be subject to a civil penalty not to exceed ~~[\$20,000.]~~ \$500,000, and shall be deemed to have committed an unfair or deceptive act or practice in the conduct of a trade or commerce and subject to the penalties specified in chapter 480. The commissioner shall refer any matter under this subsection to the attorney general, who may exercise any appropriate legal or equitable remedies that may be available to the State.

(c) For the purposes of this section, ~~[the term]~~ "person" means, in addition to the definition contained in section 486J-1, any responsible corporate officer."

SECTION 4. Sections 486J-2, 486J-3, 486J-4, 486J-6, 486J-7, 486J-8, 486J-10, and 486J-12, Hawaii Revised Statutes, are amended by substituting the word “commissioner” wherever the word “department” or “director” appears, as the context requires.

SECTION 5. **Review; report.** (a) The department of business, economic development, and tourism shall:

- (1) Gather, review, analyze, and evaluate publicly available information, studies, and reports, including unsealed documents in *Anzai v. Chevron et al.* (U.S. District Court for the District of Hawaii, Civil No. 98-00792-SPK) and the attorney general’s investigation of the petroleum industry, as may be necessary;
- (2) Gather, review, analyze, and evaluate empirical data to determine whether the Oil Price Information Service index, or other appropriate benchmarks, are applicable to Hawaii’s wholesale and retail gasoline markets;
- (3) Review options available to the legislature and make findings and recommendations concerning appropriate remedies and solutions available to reduce wholesale and retail gasoline prices in Hawaii, including proposals to impose maximum prices on wholesale and retail gasoline and the potential effects of imposing such price caps; and
- (4) Report findings and recommendations, including proposed implementing legislation, to the legislature no later than twenty days before the convening of the regular session of 2003.

(b) The attorney general and the legislative reference bureau shall assist the department by conducting legal and policy analyses, as appropriate, and in drafting legislation.

SECTION 6. There is appropriated out of the public utilities commission special fund the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2002-2003, which shall be deposited into the state general fund for the purposes of this part.

The sum appropriated shall be expended by the public utilities commission for the purposes of this part.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2002-2003, for the department of business, economic development, and tourism to pay the costs of contracting for the services of one or more persons with expertise and experience in, or with, the petroleum industry, to assist the department of business, economic development, and tourism in its review and report under section 5 of this Act; provided that any expenditure of funds by the department pursuant to this section shall be without regard to chapter 103D, Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

## PART II.

SECTION 8. The purpose of this part is to require the government of the State of Hawaii to significantly improve its energy management in state facilities in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change.

SECTION 9. Chapter 196, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . ENERGY EFFICIENCY IN STATE FACILITIES**

**§196-A Definitions.** As used in this part:

“Acquisition” means acquiring by contract supplies or services, including construction, by and for the use of the State through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, or evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

“Agency” means any executive department, independent commission, board, bureau, office, or other establishment of the State, or any quasi-public institution that is supported in whole or in part by state funds.

“Energy-savings performance contract” means an agreement for the provision of energy services and equipment, including building energy conservation enhancing retrofits and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the cost savings, lease payments, or specified revenues including utility rebates and any other available incentives, and the level of payments is made contingent upon the verified energy savings, energy production, avoided maintenance, avoided energy equipment replacement, or any combination of the foregoing bases.

“ENERGY STAR” means a labeling program introduced by the United States Environmental Protection Agency in 1992 as a voluntary labeling program designed to identify and promote energy-efficient products, in order to reduce carbon dioxide emissions.

“Exempt facility” or “exempt mobile equipment” means a facility or mobile equipment for which an agency utilizes criteria established by the energy resources coordinator to determine that compliance with this part is not practical.

“Facility” means a building or buildings or similar structure owned or leased by, or otherwise under the jurisdiction of, an agency.

“Life-cycle cost-effective” means the life-cycle costs of a product, project, or measure that are estimated to be equal to or less than the base case, i.e., current or standard practice or product.

“Life-cycle costs” means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure.

“Mobile equipment” means any state-owned vessel, aircraft, or off-road vehicle.

“Renewable energy” means energy produced by solar, energy conserved by passive solar design/daylighting, ocean thermal, wind, wave, geothermal, waste-to-energy, or biomass power.

“Renewable energy technology” means technology that uses renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term includes the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design/daylighting.

“Source energy” means the energy that is used at a site and consumed in producing and delivering energy to a site, including power generation, transmission,

and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

“Utility” means a public utility as defined in section 269-1. Utility includes federally owned nonprofit producers, county organizations, and investor or privately owned producers regulated by the state or federal government, cooperatives owned by members and providing services mostly to their members, and other nonprofit state and county agencies serving in this capacity.

“Utility energy-efficiency service” means demand-side management services provided by a utility to improve the efficiency of use of the commodity, such as electricity and gas being distributed. Services may include energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

**§196-B Greenhouse gases reduction goal.** Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by thirty per cent by January 1, 2012, compared to emission levels in calendar year 1990. In order to encourage optimal investment in energy improvements, agencies may count greenhouse gas reductions from improvements in non-facility energy use toward this goal to the extent that these reductions are approved by the coordinator.

**§196-C Energy efficiency improvement goals.** (a) Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding laboratory facilities, by twenty per cent by January 1, 2007, and thirty per cent by January 1, 2012, relative to calendar year 1990. No facility shall be exempt from these goals unless it meets criteria for exemptions established by the coordinator.

(b) Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable, of its laboratory facilities by fifteen per cent by January 1, 2007, and twenty-five per cent by January 1, 2012, relative to calendar year 1995. No facility shall be exempt from these goals unless it meets criteria for exemptions established by the coordinator.

(c) Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. Through life-cycle cost-effective measures, each agency shall provide twenty per cent of its remaining energy requirements, after energy efficiency improvement goals have been achieved, with renewable energy resources.

(d) Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum generated energy within its facilities. Agencies may accomplish this reduction by switching to less greenhouse gas-intensive or renewable energy sources, by eliminating unnecessary fuel use, or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

(e) The State shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In those cases, agencies shall receive credit toward energy reduction goals through guidelines established by the coordinator.

(f) Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under this part. Where possible, water cost savings and associated energy cost savings shall

be included in energy-savings performance contracts and other financing mechanisms.

(g) Each agency's biennial budget submission shall include funding necessary to achieve the goals of this part. Budget submissions shall include the costs associated with encouraging the use of, administering, and fulfilling agency responsibilities under energy-savings performance contracts, utility energy-efficiency service contracts, and other contractual provisions for achieving conservation goals implementing life-cycle cost-effective measures, procuring life-cycle cost-effective products, and constructing sustainably designed new buildings, among other energy costs.

The director of finance shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products, and shall consider establishing a fund that agencies may draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs.

(h) Each agency shall develop an annual implementation plan for fulfilling the requirements of this part. The plans shall be included in the annual reports to the coordinator.

**§196-D Annual report.** Beginning January 1, 2004, each agency shall measure and report annually to the coordinator on its progress in meeting the requirements of this part.

The report shall include:

- (1) How the agency is using each of the strategies described in this part to help meet energy and greenhouse gas reduction goals;
- (2) A listing and explanation as to why certain strategies, if any, have not been used; and
- (3) A listing and explanation of exempt facilities.

**§196-E Senior agency official.** Each agency shall designate a senior official to be responsible for meeting the goals and requirements of this part, including preparation of the annual report. Designated officials shall participate in the inter-agency energy policy committee established under section 196-G(c).

**§196-F Agency energy teams.** Each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, energy-savings performance contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this part. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the interagency energy policy committee.

**§196-G Interagency coordination; policy committee.** (a) The coordinator shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the governor and the legislature to report progress.

The coordinator, in consultation other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this part. The scoring criteria shall include:

- (1) The extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as energy-savings performance contracts, utility energy-efficiency service contracts, ENERGY STAR and other energy efficient products, renewable energy

technologies, electricity from renewable energy sources, and other strategies and requirement;

- (2) Overall efficiency;
- (3) Greenhouse gas reduction; and
- (4) Use of other innovative energy efficiency practices.

The scorecards shall be based on the annual energy reports submitted to the coordinator.

(b) The coordinator shall be responsible for working with agencies to ensure that they meet the goals of this part and report their progress. The coordinator shall develop and issue guidelines for agencies' preparation of their annual reports to the coordinator on energy management. The coordinator shall also have primary responsibility for collecting and analyzing the data and shall ensure that agency reports are received in a timely manner.

(c) There is established within the department of business, economic development, and tourism, an interagency energy policy committee consisting of senior agency officials, to be chaired by the coordinator. The committee shall be responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies, as designated by the coordinator, shall participate on the committee. The committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this part.

**§196-H Public-private advisory committee.** (a) The coordinator shall appoint an advisory committee consisting of representatives from:

- (1) State agencies;
- (2) County governments;
- (3) Energy service companies;
- (4) Utility companies;
- (5) Equipment manufacturers;
- (6) Construction and architectural companies;
- (7) Environmental, energy, and consumer groups; and
- (8) Other energy-related organizations.

(b) The committee shall provide input on state energy management, including how to:

- (1) Improve the use of energy-savings performance contracts and utility energy-efficiency service contracts;
- (2) Improve procurement of ENERGY STAR and other energy efficient products;
- (3) Improve building design;
- (4) Reduce process energy use; and
- (5) Enhance applications of efficient and renewable energy technologies at state facilities.

(c) The committee shall be placed in the department of business, economic development, and tourism for administration purposes.

**§196-I Life-cycle cost analysis.** Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the State's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects.

Agencies shall retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs

with efficiency measures shall be recognized in their scorecard evaluations established under section 196-G(a).

**§196-J Facility energy audits.** Agencies shall conduct energy and water audits for approximately ten per cent of their facilities each year, either independently or through energy-savings performance contracts or utility energy-efficiency service contracts.

**§196-K Financing mechanisms.** (a) Agencies shall maximize their use of available alternative financing contracting mechanisms, including energy-savings performance contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-savings performance contracts and utility energy-efficiency service contracts shall provide significant opportunities for making state facilities more energy efficient at no net cost to taxpayers.

(b) Agencies that perform energy efficiency and renewable energy system retrofitting may continue to receive budget appropriations for energy expenditures at an amount that will not fall below the pre-retrofitting energy budget but will rise in proportion to any increase in the agency's overall budget for the duration of the performance contract or project payment term. A portion of the moneys saved through efficiency and renewable energy system retrofitting shall be set aside to pay for any costs directly associated with administering energy efficiency and renewable energy system retrofitting programs incurred by the agency.

(c) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with the following provisions:

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment, or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation, and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;
- (2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
- (4) The term of any energy performance contract entered into pursuant to this section shall not exceed fifteen years;
- (5) Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract; and
- (6) Any energy performance contract shall provide that total payments shall not exceed total savings.

**§196-L State energy projects.** State energy projects may be implemented under this chapter with the approval of the comptroller and the director of finance. Notwithstanding section 196-K or section 36-41, the comptroller or the senior agency official of the department of accounting and general services, along with the



director of finance, may exempt a state energy project from the advertising and competitive bidding requirements of section 196-K or section 36-41 and chapters 103 and 103D, if the comptroller deems exemption appropriate for energy projects with proprietary technology or necessary to meet the goals of the legislature. In addition, this section shall be construed to provide the greatest possible flexibility to agencies in structuring agreements entered into so that economic benefits and existing energy incentives may be used and maximized and financing and other costs to agencies may be minimized. The specific terms of energy performance contracting under section 36-41 may be altered if deemed advantageous to the agency and approved by the director of finance and the senior agency official.

**§196-M Energy efficient products.** (a) Agencies shall select, where life-cycle cost-effective, ENERGY STAR and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR labels are not yet available, agencies may select products that are in the upper twenty-five per cent of energy efficiency as designated by the United States Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program.

Agencies shall incorporate energy efficient criteria consistent with designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for all purchasing procedures.

The State shall also consider the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products.

(b) Agencies shall strive to meet the ENERGY STAR building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by December 31, 2005. Agencies may use energy-savings performance contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to facilities. Facilities that rank in the top twenty-five per cent in energy efficiency relative to comparable commercial and state buildings shall receive the ENERGY STAR building label or its equivalent as determined by the coordinator. Agencies shall integrate this rating tool into their general facility audits.

(c) The State shall employ sustainable design principles and agencies shall apply the principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using energy-savings performance contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(d) Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of facility performance. Agencies shall include a preference for facilities having an ENERGY STAR building label in their selection criteria for acquiring leased facilities. In addition, all agencies shall encourage lessors to apply for an ENERGY STAR building label and to explore and implement projects that will reduce costs to the State, including projects carried out through the lessors' energy-savings performance contracts or utility energy-efficiency service contracts.

(e) Agencies shall implement energy reduction systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power systems when

determined to be the most cost-effective when measured against other alternatives on a life-cycle cost basis. Agencies shall survey local natural resources to optimize use of available solar, ocean thermal, biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(f) Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

**§196-N Electricity use.** To advance the greenhouse gas and renewable energy goals of this part, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its score card under section 196-G(a).

**§196-O Competition.** Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

**§196-P Reduced greenhouse gas intensity of electric power.** When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

**§196-Q Purchasing electricity from renewable energy sources.** Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the coordinator. Based on this review, each agency shall adopt policies and pursue projects that increase the use of such electricity. Agencies shall include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

In evaluating opportunities to comply with this section, agencies shall consider any renewable portfolio standard specified in the restructuring guidelines for the State and the United States Environmental Protection Agency guidelines on crediting renewable energy power.

**§196-R Mobile equipment.** Each agency shall seek to improve the design, construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

**§196-S Management strategies.** Agencies shall use the following management strategies in meeting the goals of this part:

- (1) Employee incentive programs to reward exceptional performance in implementing this part;
- (2) Performance evaluations of successful implementation of this part in areas such as energy-savings performance contracts, sustainable de-

sign, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees;

- (3) Agencies shall be allowed to retain a portion of savings generated from efficient energy and water management and shall use the savings at the facility or site where the savings occur to provide greater incentives for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources;
- (4) Training and education shall be provided for all appropriate personnel relating to the energy management strategies contained in this part, including the incorporation into existing procurement courses information on energy management tools, energy-savings performance contracts, utility energy-efficiency service contracts, energy efficient products, and life-cycle cost analysis; and
- (5) Agencies shall designate showcase facilities to highlight energy or water efficiency and renewable energy improvements.”

SECTION 10. Chapter 196, Hawaii Revised Statutes, is amended by designating sections 196-1 to 196-7 as:

**“PART I. GENERAL PROVISIONS”**

SECTION 11. Within one hundred twenty days after the effective date of this Act, the director of finance shall:

- (1) Develop and issue guidelines to agency budget officers on the preparation of annual funding requests associated with the implementation of this Act for the budget for fiscal year 2003-2004;
- (2) In collaboration with the coordinator, inform agencies how to retain savings and reinvest in other energy and water management projects; and
- (3) In collaboration with the coordinator, periodically brief agency procurement executives on the use of energy management tools, including energy-savings performance contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

SECTION 12. Within one hundred eighty days after the effective date of this Act, the coordinator, in collaboration with other agency heads, shall:

- (1) Develop and issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;
- (2) Establish criteria for determining which facilities are exempt from the Act and provide guidance for agencies to request proposed exemptions;
- (3) Develop and issue guidelines to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after December 31, 2002, in order to measure progress toward goals;
- (4) Develop and issue guidelines to clarify how agencies determine the life-cycle cost for investments required by this Act, including how to compare different energy and fuel options and assess the current tools;

- (5) Develop and issue guidelines for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases;
- (6) Develop and issue guidelines to assist each agency to determine a baseline of water consumption;
- (7) Develop and issue guidelines to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs, and that incentives for contractors involved in facility design and construction are structured to encourage the contractors to design and build at the lowest life-cycle cost;
- (8) Make information available on opportunities to purchase electricity from renewable energy sources, including relevant state and county regulations, and update the information as necessary based on technological advances and market changes, but at least every two years;
- (9) Develop Internet-based tools to assist individual and agency purchasers in identifying and purchasing energy efficient products for acquisition;
- (10) Develop and issue sustainable design and development principles for the siting, design, and construction of new facilities; and
- (11) Develop model lease provisions that incorporate energy efficiency and sustainable design.

SECTION 13. Within three hundred sixty-five days after the effective date of this Act, the coordinator, in collaboration with other agency heads, shall:

- (1) Provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;
- (2) Develop goals for the amount of energy generated at state facilities from renewable energy technologies;
- (3) Support efforts to develop standards for the certification of low environmental impact renewable energy facilities to facilitate the State's purchase of such power;
- (4) Work with the director of finance to develop a plan for purchasing advanced energy products in bulk quantities for use by multiple agencies;
- (5) Develop and issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use, including emissions associated with the production, transportation, and use of energy consumed in state facilities; and
- (6) Establish water conservation goals for state agencies.

SECTION 14. If an agency determines that a provision in this Act is inconsistent with its mission, the agency may ask the coordinator for a waiver of the provision. The coordinator shall include a list of any waivers it grants in the annual report to the governor and the legislature.

### PART III.

SECTION 15. In codifying the new sections added by section 2(1) of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 19. This Act shall take effect upon its approval; provided that:

- (1) Section 2 shall take effect on July 1, 2004; and
- (2) Sections 6 and 7 shall take effect on July 1, 2002.

(Approved May 31, 2002.)

Notes

1. Four new sections added.
2. Edited pursuant to HRS §23G-16.5.

ACT 78

H.B. NO. 1864

A Bill for an Act Relating to Visitation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

**“§571-46 Criteria and procedure in awarding custody and visitation.** In the actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child;
- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any

minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports which shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated;

- (5) The court may hear the testimony of any person or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award;
- (7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;
- (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;
- (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:
  - (A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;
  - (B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault[;] or causing reasonable fear of physical harm, bodily injury, or assault[;] to another person; and
  - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;
- (10) A court may award visitation to a parent who committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and ~~[adequate provision]~~ for the safety of the parent who is a victim of family violence ~~[can be made]~~;
- (11) In a visitation order, a court may:
  - (A) Order an exchange of a child to occur in a protected setting;

- (B) Order visitation supervised by another person or agency;
  - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
  - (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
  - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
  - (F) Prohibit overnight visitation;
  - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;
  - (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
  - (I) Order the address of the child and the victim to be kept confidential;
- (12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim's status or behavior as a victim[~~, individually or with the perpetrator of family violence,~~] as a condition of receiving custody of a child or as a condition of visitation;
- (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and
- (14) A supervised visitation center must provide: a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation[~~;~~] and [provide] supervision by a person trained in security and the avoidance of family violence.’’

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 79

H.B. NO. 1999

A Bill for an Act Relating to Hunting.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 254, Session Laws of Hawaii 1997, as amended by Act 96, Session Laws of Hawaii 2000, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval[~~;~~ ~~provided that this Act is repealed on June 30, 2002, and sections 134-5 and 134-9, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.~~].’’

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect on June 29, 2002.

(Approved May 31, 2002.)

**ACT 80**

H.B. NO. 2128

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Projects on the Island of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is in the public interest to encourage the development of cogeneration facilities that make electric energy available to members of the general public by the sale of the electric energy to an electric utility.

The legislature further finds that Hui 'Enekinia Hawai'i is engaged in the development of cogeneration facilities that will sell the electric energy it produces to Hawaii Electric Light Company, Inc., which is an electric utility serving the public. The thermal output produced can be used by existing and planned manufacturing and processing enterprises.

The legislature finds that the Hui 'Enekinia Hawai'i may be assisted through the issuance of special purpose revenue bonds because it is an industrial enterprise pursuant to part V, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

The purposes of this Act are:

- (1) To extend from June 30, 2003 to June 30, 2007, the authorization to issue special purpose revenue bonds previously authorized by Act 263, Session Laws of Hawaii 1993 and Act 135, Session Laws of Hawaii 1998;
- (2) To revise the authorization to provide more flexibility in structuring the business venture, without increasing the amount of the authorization; and
- (3) To allow the department of budget and finance to issue refunding special purpose revenue bonds.

SECTION 2. Act 263, Session Laws of Hawaii 1993, is amended by adding a new section to read as follows:

"SECTION 3A. The department of budget and finance is authorized to issue from time to time, including times subsequent to June 30, 2007, refunding special purpose revenue bonds in whatever principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 of Act 263, Session Laws of Hawaii 1993, as amended by Act 135, Session Laws of Hawaii 1998, and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section."



SECTION 3. Act 263, Session Laws of Hawaii 1993, as amended by Act 135, Session Laws of Hawaii 1998, is amended by amending section 2 to read as follows:

“SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$20,000,000, for the purpose of assisting Hui ‘Enekinia Hawai‘i, or a partnership in which Hui ‘Enekinia Hawai‘i is a general partner, for the establishment of a cogeneration facility [~~and related water production facilities~~]. The electrical output of this plant and facilities shall be made available for use by members of the general public by sale to Hawaii Electric Light Company, Inc. The [~~water and~~] thermal fluids output of this plant and related facilities shall be made available for use by members of the general public by sale to existing and planned manufacturing and processing entrepreneurs [~~in the area~~] on the island of Hawaii. The legislature finds and determines that the activity and facilities of Hui ‘Enekinia Hawai‘i constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.”

SECTION 4. Act 263, Session Laws of Hawaii 1993, as amended by Act 135, Session Laws of Hawaii 1998, is amended by amending section 4 to read as follows:

“SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [~~2003~~] 2007.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 2002.

(Approved May 31, 2002.)

## ACT 81

H.B. NO. 2248

A Bill for an Act Relating to Special Purpose Revenue Bonds for Processing Enterprises.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that coffee production throughout Hawaii was valued at over \$24,000,000 in 1998. While this is a significant contribution to the economy, coffee sales have fallen in recent years because of strong competition in world markets.

The legislature recognizes that to develop additional markets for Hawaii-grown coffee, the industry must add new products such as freeze-dried coffee. Prospective buyers for freeze-dried coffee include the United States military, overseas markets, and niche markets such as eco-tourism that rely on portable and durable food products. Freeze-drying food offers the following benefits:

- (1) Elimination of microbes in food products;
- (2) Leveling out seasonal swings in production;
- (3) Value added to non-renewable products; and
- (4) Stabilization of market price fluctuations.

In addition, the legislature recognizes that facilities that freeze-dry coffee can also be used to process other agricultural foods such as taro, papaya, mango, and

other tropical fruits. These types of food processing facilities maximize the value of existing agricultural products.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and is for the public health, safety, and general welfare.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$10,000,000, in one or more series, for the purpose of assisting Poaka, Incorporated, a State of Hawaii corporation, in planning and constructing a food processing plant for coffee and other agricultural products, at a site to be determined.

The legislature finds and determines that the planning and construction of a food processing plant constitutes a processing enterprise as defined in part IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is in the public interest.

SECTION 3. The special purpose revenue bonds issued under section 2 of this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The department of budget and finance is authorized to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in this section, from time to time, including times subsequent to June 30, 2005, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2005.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 82

H.B. NO. 2305

A Bill for an Act Relating to the Uniform Probate Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 560:3-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator’s domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than five years after the decedent’s death, except:

- (1) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;
- (2) Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person;
- (3) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment ~~[in the event]~~ if the contest is successful, may be commenced within ~~[the later of twelve months from the informal probate or three years from the decedent's death;]~~:
  - (A) Ninety days after receiving notice of an informal proceeding pursuant to section 560:3-306;
  - (B) Twelve months from the date the will was informally admitted to probate; or
  - (C) Thirty days from the entry of a formal order approving the accounts and settlement of the estate by an informally appointed personal representative,

whichever time period expires first. If an informal proceeding is closed informally, the court in its discretion may allow a will contest to proceed after the limitations period has expired if it determines that notice of the informal probate proceedings was not provided pursuant to section 560:3-306 and not more than five years has elapsed since the decedent's death;
- (4) An informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration have occurred within the five year period after decedent's death, but the personal representative has no right to possess estate assets as provided in section 560:3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and
- (5) A formal testacy proceeding may be commenced at any time after five years from the decedent's death if, in the discretion of the court it would be equitable to do so, for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will."

SECTION 2. Section 560:3-806, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As to claims presented in the manner described in section 560:3-804 within the time limit prescribed in section 560:3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for

the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. If the notice does not warn the claimant of the impending sixty-day bar, then the claim shall be barred if no petition for allowance or other proceeding on the claim has been brought within eighteen months of the date of the decedent's death. Failure of the personal representative to mail notice to a claimant of action on the claimant's claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.'

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 83

H.B. NO. 2385

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Wines of Kauai, LLC.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$3,000,000, in one or more series, for the purpose of assisting Wines of Kauai, LLC, a Hawaii corporation, with the planning, design, construction, and equipping of a winery on the island of Kauai. The legislature hereby finds and determines that the planning, design, construction, and equipping of a winery constitutes a project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a processing enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2005, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the

refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2005.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 84

H.B. NO. 2433

A Bill for an Act Relating to Child Support Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 576D-1, Hawaii Revised Statutes, is amended by amending the definitions of "child support", "compliance with an order of support", "obligor", and "order of support" to read as follows:

"Child support" means payment for the necessary support and maintenance of a child as required by law that includes but is not limited to spousal support when ~~[ordered]~~ being enforced in conjunction with child support or medical support when a court or administrative order requires the debtor parent to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born.

"Compliance with an order of support" means that an obligor:

- (1) Is not delinquent in payments in an amount equal to or greater than the sum of payments for child support ~~[and spousal support when ordered in conjunction with child support]~~ for a three-month period with regard to driver's licenses and recreational licenses and a six-month period with regard to professional and vocational licenses;
- (2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-13(d); or
- (3) Has obtained or maintained health insurance coverage as required by a child support order.

"Obligor" means a responsible parent ~~obligated~~ by court or administrative order ~~[obligated]~~ to pay child support ~~[or who is obligated by court order to pay spousal support in conjunction with child support]~~.

"Order of support" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief. An order of support may include spousal support when ordered to be paid in conjunction with ~~[child support]~~ the support and maintenance of a child; provided that the spousal support provision in an order of support shall only be enforced by the agency when the support and maintenance of a child is being enforced. An order of support may also include medical support when the debtor parent is ordered to pay an

amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born."

SECTION 2. Section 576D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The agency and its agents shall keep [such] records [as] that may be necessary or proper in accordance with this chapter. All applications and records concerning any ~~[applicant for support services or recipient of public assistance]~~ individual or case shall be confidential. The use or disclosure of information concerning any ~~[applicant or recipient]~~ individual or case shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when their official duties are directly concerned with the administration and implementation of any child support enforcement plan or program approved by Title IV-A through D, or under Titles II, X, XIV, XVI, XIX, or XX of the Social Security Act, including but not limited to any legal counsel working on behalf of the agency;
- (2) Disclosure to the extent necessary to provide information to family support payors or payees or their authorized representatives regarding payments received by the agency and the status of their support accounts; provided that the information shall be disclosed to an authorized representative only if the request is accompanied by a written waiver of the payor or payee concerned;
- (3) Disclosure to consumer reporting agencies as provided in section 576D-6(a)(6);
- (4) Other agencies or persons connected with the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;
- (5) Employees acting within the scope and course of their employment with the department as may be approved by the agency;
- (6) Purposes directly connected with any investigation, enforcement, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program in paragraph (1); and
- (7) Disclosure to the family court as may be deemed necessary by the family court for any case pending before a court or for purposes of implementation of section 571-51.5."

SECTION 3. Section 576D-14, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) In a case being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the agency may ~~[terminate]~~:

- (1) Enforce the existing order of support by sending to the employer by regular mail, by personal delivery, or by transmission through electronic means, a notice to withhold child support issued by the agency that reflects the terms and conditions specified in the order for support or income withholding order. Upon receiving a notice to withhold child support, the employer is subject to the requirements of section 576E-16(b) to (h); and
- (2) Terminate income withholding by sending a notice to the employer by regular mail or transmission by electronic means. The notice shall be issued upon determination by the agency that the obligor no longer owes the child support or that the obligation is being satisfied through withholding by another employer."

SECTION 4. Section 576D-17, Hawaii Revised Statutes, is amended to read as follows:

~~“(H)§576D-17(H) [Wilful violations;] Violations; penalties.~~ (a) Unless otherwise provided, any person or entity in the State including for-profit, nonprofit, and labor organizations, and any agency, board, commission, authority, court, or committee of the State or its political subdivisions ~~[who] that~~ knowingly, intentionally, or wilfully violates any section of this chapter or any request of the agency pursuant to this chapter shall be guilty of a petty misdemeanor.

(b) The agency may establish, through administrative rules, a system of fines for failure to promptly respond to the agency’s request for information, which may be levied without the necessity of a court order.”

SECTION 5. Section 576D-18, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The agency and other state or territorial agencies administering a program under Title IV-D shall have access, including automated inquiry access, to the records of all entities in the State for information on the employment, compensation, and benefits of any individual member, employee, or contractor of [sueh] the entity, in order to accomplish the purposes of the child support program. The entities include, but are not limited to for-profit, nonprofit, and labor organizations, and any agency, board, commission, authority, court, or committee of the State or its political subdivisions, notwithstanding any provision for confidentiality. Subject to safeguards on privacy and confidentiality and subject to the nonliability of entities that afford access under this section, the agency and other state or territorial agencies administering a program under Title IV-D shall also have access to records held by private entities with respect to individuals who owe or are owed support, or against or with respect to whom a support obligation is sought consisting of:

- (1) The names and addresses of individuals and the names and addresses of the employers of such individuals as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized pursuant to section 576E-2; and
- (2) Information, including information on assets and liabilities, on such individuals held by financial institutions.

(d) [Other state or territorial agencies administering a program under Title IV-D shall have access, including automated inquiry access, to the records of all entities in the State for information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, to the same extent and with the same restrictions as child support enforcement investigators pursuant to this chapter.] Other federal, state, and territorial agencies conducting activities under the Title IV-D program shall have access to any system used by the [state] State to locate an individual for purposes relating to motor vehicles or law enforcement.”

SECTION 6. Section 576E-1, Hawaii Revised Statutes, is amended by amending the definitions of “child support”, “compliance with an order of support”, “obligor” and “order of support” to read as follows:

““Child support” means payment for the necessary support and maintenance of a child as required by law that includes but is not limited to spousal support when [ordered] being enforced in conjunction with child support or medical support when a court or administrative order requires the debtor parent to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent’s child was born.

“Compliance with an order of support” means that an obligor:

- (1) Is not delinquent in payments in an amount equal to or greater than the sum of payments which would become due for child support, ~~[and spousal support when ordered in conjunction with child support,]~~ for a three-month period with regard to driver's and recreational licenses and for a six-month period with regard to professional and vocational licenses;
- (2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-13(d); or
- (3) Has obtained or maintained health insurance coverage as required by a child support order.

“Obligor” means a responsible parent obligated by court or administrative order to pay child support ~~[or who is obligated by court order to pay spousal support in conjunction with child support].~~

“Order of support” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief. An order of support may include spousal support when ordered to be paid in conjunction with ~~[child support.]~~ the support and maintenance of a child; provided that the spousal support provision in an order of support shall only be enforced by the agency when the support and maintenance of a child is being enforced. An order of support may also include medical support when the debtor parent is ordered to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born.”

SECTION 7. Section 576E-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In any proceeding to establish a child support order, in cases where the agency is not yet enforcing an order of support for the subject child, service of the notice provided in section 576E-5 shall be by personal service or certified mail, return receipt requested. In the case where the person to be served cannot be found, service shall be completed by leaving copies of the notice at the person's usual place of residence with some person of suitable age and discretion residing at that location. After initial service is effected, additional service upon a party shall be satisfied by regular mail to the party's last known address.”

SECTION 8. Section 576E-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b), (c), (d), and (e) to read as follows:

“(b) The income withholding order issued pursuant to subsection (a) or the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall be effective immediately after service upon an employer of a copy of the order[,] or the notice to withhold child support, which service may be effected by regular mail, by personal delivery, or by transmission through electronic means. Thereafter, the employer shall for each pay period, withhold from the income due to the responsible parent from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the designated obligee, or upon request, to the child support enforcement agency of this State, as much as may remain payable to the responsible parent for such pay period up to the amount specified in the order or the notice to withhold child support as being payable during



the same period. The employer shall immediately inform the agency of any change that would affect the income withholding order or the notice to withhold child support or the disbursement thereof.

(c) Compliance by an employer with the income withholding order issued pursuant to subsection (a) or with the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall operate as a discharge of the employer's liability to the responsible parent for that portion of the responsible parent's earnings withheld and transmitted to the agency, whether or not the employer has withheld the correct amount. For each payment made pursuant to an income withholding order[;] or a notice to withhold child support, the employer may deduct and retain as an administrative fee an additional amount of \$2 from the income owed to the responsible parent. The total amount withheld from the obligor's income, including the administrative fee, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)). Any income withholding order or notice to withhold child support shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, and shall not be subject to the exemptions or restrictions contained in part III of chapter 651 and in chapters 652 and 653. An employer who fails to comply with an income withholding order under this section or with an income withholding order or notice to withhold child support issued pursuant to section 576D-14 shall be liable to the obligee or the agency for the full amount of all sums ordered to be withheld and transmitted. An employer receiving an income withholding order or a notice to withhold child support shall transmit amounts withheld to the agency within five working days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing within seven business days following the date a copy of the order or the notice to withhold child support is mailed to the employer.

As used in this subsection, the term "business day" means a day on which the employer's office is open for regular business. The employer shall withhold funds as directed in the order[;] or the notice to withhold child support, except that when an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (1) The employer's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b));
- (3) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding order or a notice to withhold child support that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the order.

An employer who is required to withhold amounts from the income of more than one employee may remit to the agency a sum total of all such amounts in one check with a listing of the amounts applicable to each employee.

Within two working days after receipt of the amounts withheld by the employer, the agency shall disburse the amounts to the obligee for the benefit of the child, except that the agency may delay the distribution of collections toward arrearages until resolution of any timely requested hearing with respect to such arrearages.

(d) An income withholding order or a notice to withhold child support shall remain in effect until terminated when appropriate by court or administrative order, except that an employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding order~~[-]~~ or the notice to withhold child support. The agency shall promptly refund any amount withheld in error to the responsible parent.

(e) It shall be unlawful for any employer to refuse to hire a prospective employee, to discharge an employee, or to take any other disciplinary action against an employee, based in whole or in part upon an order or notice to withhold child support authorized by this section. Any employer violating this section shall be guilty of a misdemeanor and shall be punished under section 710-1077(1)(g).''

2. By amending subsections (h) and (i) to read as follows:

“(h) If there is more than one obligee, the amounts withheld from the income of a responsible parent shall be allocated among the obligees. The allocation may be based on each obligee’s proportionate share of the amount of the withholding orders or the notices to withhold child support that were served on the employer of the obligor. If concurrent assignment orders or notices to withhold child support would cause the amounts withheld from the responsible parent’s income to exceed applicable wage withholding limitations, the amount withheld shall be allocated so that in no case shall the allocation result in a withholding for one of the support obligations not being implemented. Thereafter, arrearages due under the income withholding orders or the notices to withhold child support shall be satisfied in the order of service, up to the applicable limitation.

(i) If a responsible parent changes employment when an income withholding order or a notice to withhold child support is in effect, the agency shall notify the responsible parent’s new employer of the responsible parent’s obligation in accordance with subsections (b) to (f). The new employer shall be bound by the income withholding order or the notice to withhold child support until further court or administrative order~~[-]~~ or until further notified by the agency pursuant to section 576D-14.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

**Note**

1. Prior to amendment “the” appeared here.

**ACT 85**

H.B. NO. 2531

A Bill for an Act Relating to Temporary Health Insurance for Unemployed Persons.  
*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to clarify Act 6, Third Special Session Laws of Hawaii 2001, regarding reimbursement of payments to provide that the expenditure of money appropriated shall be for a specific period of time or when the money runs out.

SECTION 2. Act 6, Third Special Session Laws of Hawaii 2001, is amended by amending section 5 to read as follows:

“SECTION 5. There is appropriated out of the general funds of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 for the reimbursement of payments made under this Act. Reimbursements shall be made for the period beginning after September 11, 2001, through June 30, 2002, or until such time as the funds appropriated have been expended, whichever occurs sooner.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 86

H.B. NO. 2538

A Bill for an Act Relating to Aquatic Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.**

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs’ special funds;

- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649;
- (27) High technology special fund under section 206M-15.5;
- (28) Public schools special fees and charges fund under section 302A-1130(f);
- (29) Cigarette tax stamp enforcement special fund established by section 28-14;
- (30) Cigarette tax stamp administrative special fund established by section 245-41.5; [and]
- (31) Tobacco enforcement special fund established by section 28-15; and
- (32) Sport fish special fund under section 187A-9.5;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 2. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special out-of-school time instructional program fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Domestic violence prevention special fund under section 321-1.3;
- (9) Spouse and child abuse special account under section 346-7.5;
- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees’ retirement system created by section 88-109;
- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital and operations special fund established under section 206X-10.5;
- (15) Hawaii health systems corporation special funds;
- (16) Tourism special funds<sup>1</sup> established under section 201B-11;
- (17) Compliance resolution fund established under section 26-9;
- (18) Universal service fund established under chapter 269;
- (19) Integrated tax information management systems special fund under section 231-3.2;
- (20) Insurance regulation fund under section 431:2-215;

- (21) Hawaii tobacco settlement special fund under section 328L-2;
- (22) Emergency and budget reserve fund under section 328L-3;
- (23) Probation services special fund under section 706-649;
- (24) High technology special fund under section 206M-15.5;
- (25) Public schools special fees and charges fund under section 302A-1130(f);
- (26) Cigarette tax stamp enforcement special fund established by section 28-14;
- (27) Cigarette tax stamp administrative special fund established by section 245-41.5; [and]
- (28) Tobacco enforcement special fund established by section 28-15; and
- (29) Sport fish special fund under section 187A-9.5;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 3. Section 187A-9.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) In addition to subsection (c), the department may use moneys in the sport fish special fund for the importation into, and the management, preservation, propagation, enforcement, and protection of sport fishes in, the State; provided that the department, prior to authorizing expenditures or expending funds from the sport fish special fund, first shall attempt to use those funds to maximize the State's participation to secure federal funds under the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act, as amended."

SECTION 4. Section 188-37, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department may issue permits to those persons with a valid commercial marine license issued pursuant to section 189-2 who own or operate a vessel deemed capable by the department for effectively taking marine life within the Northwestern Hawaiian Islands, and whenever the department deems necessary, it may limit the number of permits issued to take marine life in any particular area and such limitation shall be on the basis of the order of application for permits. Issuance of permits shall be limited to persons utilizing methods or appliances approved by rule of the department, which need not be legal elsewhere within the State, and these permittees may take species of marine life, when and as approved by rule of the department. The fee for the Northwestern Hawaiian Islands taking permit shall be established by the department by rules adopted in accordance with chapter 91. ~~[The department shall set the fee in an amount that, when combined with the fees provided for in sections 188-50 and 189-2, shall be reasonably necessary to supplement the funding for:~~

- ~~(1) Enforcement of this chapter and section 189-2; and~~
- ~~(2) The activities set forth in section 187A-11.]~~

The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation."

SECTION 5. Section 188-50, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The licenses ~~[shall]~~ may be issued by agents of the department of land and natural resources upon written application in such form as may be prescribed by the department together with payment of a fee. ~~[The application shall require a~~

statement under oath of the applicant's name, address, domicile or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes. All licenses shall expire and become void one year from the date of issuance, except the tourist license which shall expire and become void thirty days after the date of issuance; provided that no fees or charges shall be made for licenses issued to persons sixty-five years of age and older. A duplicate license may be issued upon affidavit that the original license has been lost or destroyed and upon the payment of a duplicate license fee.] The fees for licenses and duplicate licenses shall be established by the department by rules adopted in accordance with chapter 91. [The department shall set the fees in an amount that, when combined with the fees provided for in sections 188-37 and 189-2, shall be reasonably necessary to supplement the funding for:

- (1) Enforcement of this chapter and section 189-2; and
- (2) The activities set forth in section 187A-11.]''

SECTION 6. Section 189-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The fees for commercial marine licenses and duplicate commercial marine licenses shall be established by the department by rules adopted in accordance with chapter 91. [The department shall set the fees in an amount that, when combined with the fees provided for in sections 188-37 and 188-50, shall be reasonably necessary to supplement the funding for:

- (1) Enforcement of this section and chapter 188; and
- (2) The activities set forth in section 187A-11.]’’

SECTION 7. Section 189-2.4, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The following revenues shall be deposited into the commercial fisheries special fund:

- (1) Moneys collected as fees for [commercial fishing] licenses and permits[;] related to commercial fishing and the sale of aquatic life, use of public fishing grounds for commercial fishing purposes, and use of commercial fisheries-related facilities;
  - (2) Moneys collected under the provision of any law or rule related to the importation, rearing, fishing, taking, catching, or killing of any aquatic life for commercial purposes;
  - (3) Moneys, other than informers' fees authorized under section 187A-14, collected as fines or bail forfeitures or administrative fines for violations of this chapter;
  - (4) Moneys collected from the sale of any article purchased from the department related to aquatic life used for commercial purposes or fishing for commercial purposes;
  - (5) Any monetary contributions or moneys collected from the sale of nonmonetary gifts to benefit aquatic life used for commercial purposes or fishing for commercial purposes; and
  - (6) Moneys derived from interest, dividend, or other income from the above sources.
- (c) The commercial fisheries special fund shall be used for the following:
- (1) Programs and activities for projects concerning aquatic life used for commercial purposes;
  - (2) Developing and conducting resource monitoring programs, conducting studies to determine the sustainable use of aquatic life for commercial purposes, and developing recommendations for acceptable levels of use;

- (3) Research programs and activities concerning the conservation and management of aquatic life for commercial purposes;
- (4) Programs and activities concerning the importation and management, preservation, propagation, enforcement, and protection of aquatic life used for commercial purposes; and
- (5) Payroll for personnel of the department or the awarding of grants-in-aid to or contracts with the University of Hawaii or other qualified organizations or individuals to develop or implement the programs and activities for the conservation and management of aquatic life for commercial purposes.”

SECTION 8. Section 187A-11, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval; provided that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved May 31, 2002.)

Notes

1. Prior to amendment “fund” appeared here.
2. Edited pursuant to HRS §23G-16.5.

**ACT 87**

S.B. NO. 2791

A Bill for an Act Relating to the Hawaii State Public Library System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii state public library system provides year-round programs that require staff members to have a direct contact with children of all ages. This direct contact between staff members and children increases the potential liability to the Hawaii state public library system.

The purpose of this Act is to deem sex offenders ineligible for employment for any position within the Hawaii state public library system.

SECTION 2. Section 846-43, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) The department of education, including the Hawaii state public library system, and the counties shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed, seeking employment, or seeking to serve as teacher trainees in any public school, or who are employed or seeking employment in any county, or in the Hawaii state public library system in positions which place them in close proximity to children. These procedures shall include but not be limited to criminal history record checks. For the purposes of this section, “criminal history record check” means an examination or search for evidence of an individual’s criminal history by means of:

- (1) A search of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files and, if found, an analysis and any other information available pertaining thereto; and
- (2) A criminal history record check conducted by the Hawaii criminal justice data center;

provided that the Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed for Federal Bureau of Investigation criminal history record checks.

(b) Except as otherwise specified, any person who is employed or seeks employment with a public school, or as a teacher trainee in any public school, or who is employed or seeks employment with any county or with the Hawaii state public library system in a position that necessitates close proximity to children shall be required to provide to the employer or prospective employer:

- (1) A sworn statement indicating whether or not the person has ever been convicted of an offense for which incarceration is a sentencing option, and the details thereof;
- (2) Written consent for the employer to conduct a criminal history record check as provided in subsection (a) and to obtain other information for verification; and
- (3) Permission to be fingerprinted for the purpose of the Federal Bureau of Investigation criminal history record check.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the employer or prospective employer for the purpose of determining whether or not a person is suitable for working in close proximity to children. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect."

2. By amending subsection (d) to read:

"(d) This section shall not be used by the department<sup>1</sup> to secure criminal history record checks on persons who have been employed continuously by the department, including the state public library system, on a salaried basis prior to July 1, 1990."

3. By amending subsection (g) to read:

"(g) For the purpose of this section, notwithstanding any other law to the contrary, the department of education, including the Hawaii state public library system, and the counties shall be exempt from section 831-3.1 and need not conduct its investigations, notifications, or hearings in accordance with chapter 91."

SECTION 3. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

#### Notes

1. Prior to amendment "of education" appeared here.
2. No bracketed and stricken material.



A Bill for an Act Relating to the Hawaii Commission for National and Community Service.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
HAWAII COMMISSION FOR NATIONAL AND COMMUNITY  
SERVICE**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Commission” means the Hawaii commission for national and community service.

§ -2 **Hawaii commission for national and community service; establishment.** There is established within the University of Hawaii, for administrative purposes only, the Hawaii commission for national and community service to:

- (1) Encourage community service and volunteer participation as a means of community and state problem-solving;
- (2) Promote and support voluntary citizen involvement in government and private programs throughout the State;
- (3) Develop a long-term, comprehensive vision and plan for action for community service initiatives in Hawaii; and
- (4) Serve as the State’s liaison to national and state organizations that support its mission.

The establishment of this commission replaces the commission created by Executive Order 94-01.

§ -3 **Commission; membership; vacancies.** (a) Members of the commission shall be appointed by the governor on a bipartisan basis subject to section 26-34. The commission shall consist of not fewer than fifteen and not more than twenty-five members. Not more than fifty per cent of the commission plus one member may be from the same political party. To the extent possible, the commission shall be balanced according to race, ethnicity, age, disability, and gender characteristics. All appointments shall be for four-year terms. Members shall not serve more than two consecutive terms. The commission shall include:

- (1) An individual with expertise in the educational, training, and developmental needs of youths, particularly disadvantaged youths;
- (2) An individual with experience in promoting the involvement of older adults in service and volunteerism;
- (3) A representative of community-based agencies or community-based organizations within the State;
- (4) The superintendent of education, or a designee;
- (5) A representative of county governments;
- (6) A representative of local labor organizations in the State;
- (7) A representative of business;
- (8) An individual between the ages of sixteen and twenty-five who is a participant or supervisor in a volunteer or service program; and

- (9) A representative of a national service program described in title 42 United States Code section 12572(a), as amended, as a nonvoting, ex officio member.
- (b) The commission may include:
  - (1) Members selected from among local educators;
  - (2) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons;
  - (3) Members selected from among out-of-school youths or other at-risk youths; and
  - (4) Representatives of entities that receive assistance under the federal Domestic Volunteer Service Act of 1973.
- (c) Not more than twenty-five per cent of commission members may be employees of state government, though additional state agency representatives may sit on the commission as nonvoting, ex officio members.
- (d) Vacancies among the members, filled by the governor, shall serve for the remainder of the term.
- (e) The members shall serve without compensation, but shall be reimbursed their necessary and reasonable expenses incurred in the performance of their duties, including travel expenses.
- (f) Members currently serving under Executive Order 94-01 may be reappointed to a new four-year term and may serve two consecutive terms.

**§ -4 Officers.** (a) The officers of the commission shall be the chair and vice chair. All officers shall be elected by the voting commission members from among their ranks and shall serve for a term of one year. Vacancies in any offices shall be filled with an election by the commission for the remainder of the unexpired term.

- (b) The chair shall:
  - (1) Preside at all meetings of the commission;
  - (2) Appoint all committee chairs;
  - (3) Assist all chairs in the planning of committee activities;
  - (4) Supervise all chairs as to the management of committee plans;
  - (5) Authorize and execute the wishes of the commission; and
  - (6) Be an ex officio member of all committees.
- (c) The vice chair shall assist the chair, and, in the absence of the chair, perform the duties of the chair. The vice chair shall accept special assignments from the chair and perform other duties as delegated by the commission.

**§ -5 Meetings.** The commission shall meet at least quarterly. Failure to attend at least seventy-five per cent of called meetings in any calendar year shall result in removal from the commission. A quorum shall consist of a simple majority of voting members. All meetings of the commission shall be conducted subject to chapter 92.

**§ -6 Powers, duties, and functions.** The commission shall:

- (1) Ensure that its funding decisions meet all federal and state statutory requirements;
- (2) Recommend innovative, creative, statewide service programs to increase volunteer participation in all age groups and community-based problem-solving among diverse participants;
- (3) Prepare a national three-year service plan for the State, which follows state and federal guidelines;

- (4) Develop and implement a centralized, organized system of obtaining information and technical support concerning volunteerism and community service recruitment, projects, training methods, materials, and activities throughout Hawaii and share the information and support upon request;
- (5) Promote strong interagency collaboration as an avenue for maximizing resources and provide that model on the state level;
- (6) Provide public recognition and support of individual volunteer efforts and successful or promising private sector initiatives and public-private partnerships that address community needs;
- (7) Stimulate increased community awareness of the impact of volunteer services in Hawaii;
- (8) Use local, state, and federal resources to reinforce, expand, and initiate quality service programs;
- (9) Serve as the State's liaison and voice to appropriate national and state organizations that support its mission;
- (10) Prepare the State's applications under title 42 United States Code sections 12543 and 12582, as amended;
- (11) Assist in the preparation of the department of education's application for assistance under title 42 United States Code section 12525;
- (12) Prepare the State's application under title 42 United States Code section 12582, as amended, for approved national service positions;
- (13) Make technical assistance available to enable applicants for assistance under title 42 United States Code section 12571, as amended, to plan and implement service programs and to apply for assistance under the federal service laws such as the federal National Services Trust Program;
- (14) Assist in the provision of health care and child care benefits under title 42 United States Code section 12594, as amended, to participants in national service programs that receive assistance under title 42 United States Code section 12571, as amended;
- (15) Develop a state system for the recruitment and placement of participants in programs that receive assistance under the national service laws and disseminate information concerning national service programs that receive the assistance of approved national service positions;
- (16) Administer the State's grant program in support of national service programs (using assistance provided to the State under title 42 United States Code section 12571, as amended) including selection, oversight, and evaluation of grant recipients;
- (17) Coordinate its functions (including recruitment, public awareness, and training activities) with any division of the federal ACTION program or the Corporation for National and Community Services that carries out volunteer service programs in the State; and
- (18) Comply with the requirements and duties of the commission as provided by title 42 United States Code section 12638, as amended.

§ **-7 Expenses.** The commission may accept funds and in-kind services from other state and federal entities, as authorized by state law.

§ **-8 Staff.** The commission may establish and fill the following positions:

- (1) One executive director;
- (2) One senior program officer;
- (3) Two program officers;

- (4) One accountant; and
- (5) One secretary.

The commission may hire additional staff to assist in the performance of its duties and responsibilities. The staff of the commission shall be hired without regard to chapter 76; provided that staff shall be eligible for participation in state employee benefit plans.

§ -9 **Rules.** The commission may adopt rules under chapter 91 to implement this chapter.”

SECTION 2. All functions and programs of the Hawaii commission for national and community service established by Executive Order 94-01 are transferred to the Hawaii commission for national and community service created by this Act.

The incumbent executive director of the commission, who is exempt from chapter 76, Hawaii Revised Statutes, whose functions are transferred by this Act, shall be transferred and placed in a like position at the University of Hawaii for the Hawaii commission for national and community service and shall perform such duties as designated by the chairperson of the commission upon transfer, without any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, subject to state personnel laws and this Act. There shall be no loss of any position by the department of labor and industrial relations as a result of this Act.

Any employee who, prior to this Act, was exempted from civil service and who may be transferred as a consequence of this Act, shall continue to retain the employee's exempt status and shall not be appointed to a civil service position because of this Act.

SECTION 3. All records, equipment, machines, files, supplies, contracts, books, papers, authorizations, documents, and other property heretofore made, or acquired, by the Hawaii commission for national and community service shall be transferred to the Hawaii commission for national and community service created by this Act with the functions to which they relate.

SECTION 4. If any provision of this Act conflicts with a provision of the Executive Order dated January 28, 1994, this Act shall control.

SECTION 5. All Acts passed by the legislature during this regular session of 2002, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such Acts specifically provide that this Act is being amended.

SECTION 6. This Act shall be liberally construed to accomplish the purposes set forth in section 1. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Any federal funds received for the Hawaii commission for national and community service established by Executive Order 94-01 shall be transferred to the University of Hawaii for the purposes of this Act.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

ACT 89

H.B. NO. 1011

A Bill for an Act Relating to Elections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 11-139, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any voter who requires assistance to vote [~~by reason of blindness, disability, or inability to read or write~~] may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or agent of the voter’s union, or the voter may receive the assistance of two precinct officials who are not of the same political party. [~~Before rendering assistance or permitting assistance to be rendered, the precinct officials shall be satisfied that the physical disability exists. If a~~] A voter [with a physical disability finds it unduly burdensome to enter the polling place, the voter] needing assistance may be handed a ballot outside the polling place but within one hundred feet thereof or within the polling place parking lot by the precinct officials and in their presence but in a secret manner, mark and return the same to the precinct officials.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

ACT 90

H.B. NO. 1772

A Bill for an Act Relating to Residency of Police Officer Applicants.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that state residency requirements deter prospective police officer applicants at a time when the State suffers from serious shortages in public safety positions. The purpose of this Act is to allow applicants for police officer positions to be non-residents of Hawaii at the time of their application.

SECTION 2. Section 78-1, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All persons seeking employment with the government of the State or in the service of any county shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States, and residents of the State at the time of their application for employment and as a condition of eligibility for continued employment.

“Resident” means a person who is physically present in the State at the time the person claims to have established the person’s domicile in the State and shows

the person's intent is to make Hawaii the person's permanent residence. In determining this intent, the following factors shall be considered:

- (1) Maintenance of a domicile or permanent place of residence in the State;
- (2) Absence of residency in another state; and
- (3) Former residency in the State.

This subsection's requirement for state residency shall not apply to applicants for police officer positions; provided that upon employment, the police officer shall establish residency as a condition of continued employment as a police officer."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

## ACT 91

H.B. NO. 2300

A Bill for an Act Relating To The Judiciary.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I. GENERAL PROVISIONS

SECTION 1. This Act shall be known and may be cited as the Judiciary Supplemental Appropriations Act of 2002.

SECTION 2. Act 1, First Special Session Laws of Hawaii 2001, is amended by amending part II to read as follows:

### “PART II. PROGRAM APPROPRIATIONS

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2001, and ending June 30, 2003. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

#### P R O G R A M   A P P R O P R I A T I O N S

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
The Judicial System							
1. JUD101 - COURTS OF APPEAL							
				74.00*		[ 74.00*]	
						68.00*	
	OPERATING		JUD	4,994.899A		[ 4,826,638A]	
			JUD			4,666,007A	
			JUD	75,000W		243,261W	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
2.	JUD111	- CIRCUIT COURTS		515.50*		[ 520.50*]	
	OPERATING		JUD	28,900,495A		[29,390,723A]	
			JUD			A	
			JUD	300,000B		[ 300,000B]	
			JUD			B	
3.	JUD112	- FAMILY COURTS		423.00*		[ 423.00*]	
	OPERATING		JUD	28,965,420A		[28,943,455A]	
			JUD			A	
			JUD	655,580B		[ 655,580B]	
			JUD			B	
4.	JUD121	- DISTRICT COURTS		500.50*		[ 500.50*]	
	OPERATING		JUD	19,697,021A		[19,531,007A]	
			JUD			A	
				35.00*		[ 35.00*]	
						*	
			JUD	2,345,272B		[ 1,988,786B]	
			JUD			B	
5.	JUD310	- FIRST JUDICIAL CIRCUIT				983.50*	
	OPERATING		JUD			50,381,922A	
			JUD			35.00*	
			JUD			3,106,420B	
6.	JUD320	- SECOND JUDICIAL CIRCUIT				194.00*	
	OPERATING		JUD			10,354,453A	
7.	JUD330	- THIRD JUDICIAL CIRCUIT				196.00*	
	OPERATING		JUD			12,489,454A	
8.	JUD350	- FIFTH JUDICIAL CIRCUIT				81.00*	
	OPERATING		JUD			4,328,512A	
9.	JUD201	- ADMIN. DIRECTOR SERVICES		257.00*		[ 257.00*]	
	OPERATING		JUD	16,945,802A		[16,972,882A]	
			JUD			A	
			JUD	3,975,388B		[ 1,746,738B]	
			JUD			B	
	[INVESTMENT CAPITAL		JUD	14,314,000C		8,713,000C]	
10.	JUD601	- ADMINISTRATION				257.00*	
	OPERATING		JUD			16,850,929A	
			JUD			1.00*	
			JUD			3,568,207B	
	INVESTMENT CAPITAL		JUD	14,314,000C		42,733,000C	

SECTION 3.<sup>1</sup> Act 1, First Special Session Laws of Hawaii 2001, is amended:  
(1) By adding a new section to read as follows:

“SECTION 6.1. Provided that of the general fund appropriation for courts of appeal (JUD 101), the sum of \$138,200 for fiscal year 2002-2003 shall be expended on dues and subscriptions for the law library; provided further that any funds not utilized by the law library for dues and subscriptions shall be lapsed back into the general fund; provided further that the judiciary shall submit a report to the legislature detailing all expenditures by the law library on dues and subscriptions; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session.”

(2) By adding a new section to read as follows:

“SECTION 9.1. Provided that of the special fund appropriation for the first judicial circuit (JUD 310), the sum of \$162,054 for fiscal year 2002-2003 may be expended from the computer system special fund for a local area network/wide area network system for Kaneohe district court.”

(3) By adding a new section to read as follows:

“SECTION 9.2. Provided that of the special fund appropriation for administration (JUD 601), the sum of \$472,780 for fiscal year 2002-2003 may be expended from the computer system special fund to upgrade the financial management and accounting system.”

(4) By adding a new section to read as follows:

“SECTION 9.3. Provided that of the special fund appropriation for administration (JUD 601), the sum of \$48,689 may be expended from the computer system special fund to procure a full-time webmaster position.”

(5) By repealing section 8.

SECTION 4.<sup>1</sup> Part IV, Act 1, First Special Session Laws of Hawaii 2001, is amended by amending part IV to read as follows:

#### **PART IV. CAPITAL IMPROVEMENT PROJECTS**

SECTION 14. The sum of [\$23,027,000] \$57,047,000 appropriated or authorized in part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

#### **CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F

The Judicial System

[JUD201 - ADMIN. DIRECTOR SERVICES ]



CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
[1.		KAUAI JUDICIARY COMPLEX, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE KAUAI JUDICIARY COMPLEX IN LIHUE, KAUAI.					
		DESIGN			400		
		CONSTRUCTION				4,000	
		EQUIPMENT				4,000	
		TOTAL FUNDING	JUD	400C		8,000C]	
[2.		HILO JUDICIARY COMPLEX, HAWAII					
		PLANS, LAND ACQUISITION, AND DESIGN FOR THE HILO JUDICIARY COMPLEX, HAWAII.					
		PLANS			25		
		LAND			3,500		
		DESIGN			3,500		
		TOTAL FUNDING	JUD	7,025C			C]
[3.		KOOLAUPOKO DISTRICT COURT, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE KOOLAUPOKO DISTRICT COURT IN KANEOHE, OAHU.					
		CONSTRUCTION			500		
		EQUIPMENT			775		
		TOTAL FUNDING	JUD	1,275C			C]
[4.		KAPUAIWA BUILDING INTERIOR ALTERATIONS AND IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR AND OTHER IMPROVEMENTS AT THE KAPUAIWA BUILDING, OAHU.					
		DESIGN			20		
		CONSTRUCTION			645		
		EQUIPMENT			10		
		TOTAL FUNDING	JUD	675C			C]
[5.		ALIIOLANI HALE INTERIOR ALTERATIONS AND IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR ALTERATIONS AND IMPROVEMENTS AT ALIIOLANI HALE, OAHU.					
		DESIGN			55		
		CONSTRUCTION			710		
		EQUIPMENT			10		
		TOTAL FUNDING	JUD	775C			C]
[6.		ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE.					
		PLANS			1		1
		DESIGN			38		34
		CONSTRUCTION			150		135

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		EQUIPMENT			47		43
		TOTAL FUNDING	JUD		236C		213C]
[ 7.		REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE.					
		PLANS			5		5
		DESIGN			70		70
		CONSTRUCTION			415		415
		EQUIPMENT			10		10
		TOTAL FUNDING	JUD		500C		500C]
[ 8.		KAAHUMANU HALE AIR CONDITIONING CHILLER PLANT REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF AIR CONDITIONING CHILLER PLANT AT KAAHUMANU HALE, OAHU.					
		DESIGN			150		
		CONSTRUCTION			1,400		
		TOTAL FUNDING	JUD		1,550C		C]
[ 9.		KAUIKEAOULI HALE AIR CONDITIONING CHILLER PLANT REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF AIR CONDITIONING CHILLER PLANT AT KAUIKEAOULI HALE, OAHU.					
		DESIGN			115		
		CONSTRUCTION			1,120		
		TOTAL FUNDING	JUD		1,235C		C]
[10.		ALIIOLANI HALE AIR CONDITIONING EQUIPMENT REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF CHILLER PLANT AND AIR CONDITIONING EQUIPMENT AT ALIIOLANI HALE, OAHU.					
		DESIGN			48		
		CONSTRUCTION			320		
		TOTAL FUNDING	JUD		368C		C]
[11.		JUVENILE DETENTION HOME FACILITY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR ROOF AND OTHER IMPROVEMENTS AT THE EXISTING JUVENILE DETENTION HOME, HALE HOOMALU, OAHU.					
		DESIGN			30		
		CONSTRUCTION			245		
		TOTAL FUNDING	JUD		275C		C]

**JUD601 - ADMINISTRATION**11A. KAUAI JUDICIARY COMPLEX, KAUAI

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000's)				
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		<u>DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE KAUAI JUDICIARY COMPLEX IN LIHUE, KAUAI.</u>					
		DESIGN		400			
		CONSTRUCTION				6,900	
		EQUIPMENT				4,000	
		TOTAL FUNDING	JUD	400C		10,900C	
11B.		<u>HILO JUDICIARY COMPLEX, HAWAII</u>					
		<u>PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE HILO JUDICIARY COMPLEX, HAWAII.</u>					
		PLANS		25			
		LAND		3,500			
		DESIGN		3,500		1,500	
		CONSTRUCTION				28,500	
		TOTAL FUNDING	JUD	7,025C		30,000C	
11C.		<u>KOOLAUPOKO DISTRICT COURT, OAHU</u>					
		<u>CONSTRUCTION AND EQUIPMENT FOR THE KOOLAUPOKO DISTRICT COURT IN KANEOHE, OAHU.</u>					
		CONSTRUCTION		500			
		EQUIPMENT		775		20	
		TOTAL FUNDING	JUD	1,275C		20C	
11D.		<u>KAPUAIWA BUILDING INTERIOR ALTERATIONS AND IMPROVEMENTS, OAHU</u>					
		<u>DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR AND OTHER IMPROVEMENTS AT THE KAPUAIWA BUILDING, OAHU.</u>					
		DESIGN		20			
		CONSTRUCTION		645			
		EQUIPMENT		10			
		TOTAL FUNDING	JUD	675C			C
11E.		<u>ALIOLANI HALE INTERIOR ALTERATIONS AND IMPROVEMENTS, OAHU</u>					
		<u>DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR ALTERATIONS AND IMPROVEMENTS AT ALIOLANI HALE, OAHU.</u>					
		DESIGN		55			
		CONSTRUCTION		710			
		EQUIPMENT		10			
		TOTAL FUNDING	JUD	775C			C
11F.		<u>ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE</u>					
		<u>PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE.</u>					
		PLANS		1		1	
		DESIGN		38		34	
		CONSTRUCTION		150		135	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		<u>EQUIPMENT</u>			47		43
		<u>TOTAL FUNDING</u>	<u>JUD</u>		<u>236C</u>		<u>213C</u>
11G.		<u>REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE</u>					
		<u>PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE.</u>					
		<u>PLANS</u>			5		5
		<u>DESIGN</u>			70		70
		<u>CONSTRUCTION</u>			415		415
		<u>EQUIPMENT</u>			10		10
		<u>TOTAL FUNDING</u>	<u>JUD</u>		<u>500C</u>		<u>500C</u>
11H.		<u>KAAHUMANU HALE AIR CONDITIONING CHILLER PLANT REPLACEMENT, OAHU</u>					
		<u>DESIGN AND CONSTRUCTION FOR REPLACEMENT OF AIR CONDITIONING CHILLER PLANT AT KAAHUMANU HALE, OAHU.</u>					
		<u>DESIGN</u>			150		
		<u>CONSTRUCTION</u>			1,400		
		<u>TOTAL FUNDING</u>	<u>JUD</u>		<u>1,550C</u>		<u>C</u>
11I.		<u>KAUIKEAOULI HALE AIR CONDITIONING REPLACEMENT, OAHU</u>					
		<u>DESIGN AND CONSTRUCTION FOR REPLACEMENT OF AIR CONDITIONING CHILLER PLANT AT KAUIKEAOULI HALE, OAHU.</u>					
		<u>DESIGN</u>			115		
		<u>CONSTRUCTION</u>			1,120		
		<u>TOTAL FUNDING</u>	<u>JUD</u>		<u>1,235C</u>		<u>C</u>
11J.		<u>ALIIOLANI HALE AIR CONDITIONING EQUIPMENT REPLACEMENT, OAHU</u>					
		<u>DESIGN AND CONSTRUCTION FOR REPLACEMENT OF CHILLER PLANT AND AIR CONDITIONING EQUIPMENT AT ALIIOLANI HALE, OAHU.</u>					
		<u>DESIGN</u>			48		
		<u>CONSTRUCTION</u>			320		
		<u>TOTAL FUNDING</u>	<u>JUD</u>		<u>368C</u>		<u>C</u>
11K.		<u>JUVENILE DETENTION HOME FACILITY IMPROVEMENTS, OAHU</u>					
		<u>DESIGN AND CONSTRUCTION FOR ROOF AND OTHER IMPROVEMENTS AT THE EXISTING JUVENILE DETENTION HOME, HALE HOOMALU, OAHU.</u>					
		<u>DESIGN</u>			30		
		<u>CONSTRUCTION</u>			245		
		<u>TOTAL FUNDING</u>	<u>JUD</u>		<u>275C</u>		<u>C</u>
11L.		<u>KAAHUMANU HALE ROOF AND SKYLIGHT AREA IMPROVEMENTS, OAHU</u>					
		<u>DESIGN AND CONSTRUCTION FOR UPGRADE OF ROOF, SKYLIGHT, AND RELATED IMPROVEMENTS AT KAAHUMANU HALE, OAHU.</u>					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN					1
		CONSTRUCTION					1,099
		TOTAL FUNDING	JUD		C		1,100C"

SECTION 5.<sup>1</sup> Part V, Act 1, Special Session Laws of Hawaii 2001, is amended by amending Part V to read as follows:

**“PART V. ISSUANCE OF BONDS**

SECTION 15. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in Part II and listed in Part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed [ \$23,027,000 ] \$57,047,000.”

SECTION 6.<sup>1</sup> Act 1, Special Session Laws of Hawaii 2001, is amended by adding a new section to read as follows:

“SECTION 15.1. Any law to the contrary notwithstanding the appropriation under Act 299, Session Laws of Hawaii 1991, section 13, as amended and re-numbered in Act 301, Session Laws of Hawaii 1992, section 5, in the amount indicated or balance thereof, allotted, encumbered, and unrequired, is hereby lapsed:

Item No.	Amount	(MOF)
<u>JUD 201-5</u>	<u>\$ 325,000</u>	<u>C”</u>

SECTION 7.<sup>1</sup> If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 8.<sup>1</sup> If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 9.<sup>1</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10.<sup>1</sup> This Act shall take effect upon approval.

(Approved May 31, 2002.)

**Note**

1. Section number redesignated.

## ACT 92

H.B. NO. 2304

A Bill for an Act Relating to Juror Privacy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that individuals have a constitutional right to privacy which includes the right to informational privacy. Government agencies collect a great deal of personal information that individuals would not wish to be made publicly accessible.

The legislature further finds that citizens summoned for jury duty are required to divulge highly personal information. The information collected by the courts from prospective jurors serves multifaceted purposes. Some information is used administratively making it possible for court staff to communicate with jurors, and to provide juror compensation. Other information is used to determine whether an individual is disqualified or exempted from jury service. Finally, other information is used to facilitate the jury selection process by giving the parties access to general information regarding prospective jurors. Although the information gathered serves legitimate purposes, not all information may be relevant to the fairness or impartiality of prospective jury panels, nor should such mandated information be publicly accessible.

The purpose of this Act is to balance the legitimate privacy expectations of citizens summoned for jury service, with the right of litigants to a fair and impartial jury, while not diminishing the right of the public and the press to open court proceedings.

SECTION 2. Section 612-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Whoever has custody, possession, or control of any of the lists [~~which are to be~~] used in compiling the master list, shall make the list available to the clerk for inspection, reproduction, and copying at all reasonable times.”

SECTION 3. Section 612-13, Hawaii Revised Statutes, is amended to read as follows:

“**§612-13 Juror qualification form.** (a) The clerk shall prepare an alphabetical list of the names in the master jury wheel, which shall not be disclosed to any person other than pursuant to this chapter or specific order of the court. The clerk shall mail to every name on [~~sueh~~] the list a juror qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The form shall be subject to approval by the court as to matters of form and shall elicit the name, address of resident, age of the prospective juror, other information pertinent to disqualification or exemption from jury service, and [~~sueh~~] any other matters as may be ordered by the court. The form [~~shall~~] also shall contain the prospective juror’s declaration that the prospective juror’s responses are true to the best of the prospective juror’s knowledge and the prospective juror’s acknowledgment that a wilful misrepresentation of a material fact may be punished by a fine of not more than \$500 or imprisonment for not more than thirty days, or both. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may do it for the prospective juror and shall indicate that the person has done so and the reason therefor. Upon failure or refusal of any person duly receiving the juror qualification form to complete and return it as required, or in case of an omission, ambiguity, or error in a returned form,

the court, after first summoning the person to appear before the clerk to complete or correct the form, may punish the person for contempt.

(b) At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required or permitted to fill out another juror qualification form in the presence of the court or clerk, at which time the prospective juror may be questioned, but only with regard to the prospective juror's responses to questions contained on the form and grounds for the prospective juror's exemption, excuse, or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(c) Any person who wilfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a petty misdemeanor.

(d) Juror qualification forms shall not be deemed a public record, nor shall they become part of the court record unless the court so orders and places under the seal of the court; provided that a redacted form may be disclosed:

- (1) To the litigants pursuant to section 612-17(c); or
- (2) When permitted in accordance with section 612-23.'

SECTION 4. Section 612-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every year the clerk of each circuit shall make and file, not later than January 5, one or more certified lists of the names and addresses of fifty citizens, or ~~[such]~~ a greater number as the court may order, subject to serve as grand jurors during the ensuing year from and after January 15. Every year the clerk of each circuit shall likewise make and file, not later than December 20, a separate certified list of the names and addresses of citizens subject to serve as trial jurors during the ensuing year, from and after January 1, the number for each circuit ~~[to]~~ shall be ~~[such]~~ as the clerk considers necessary. The certified lists of grand jurors and trial jurors shall be compiled from names drawn at random from the qualified jury wheel, and shall be prepared in alphabetical sequence. Upon the order of the court, from time to time, additional lists of persons subject to serve as grand jurors shall be compiled and filed, and additional names shall be added to a grand or trial jury list; provided that all ~~[such]~~ additions shall be made by drawing from the qualified jury wheel for the appropriate year. When more than one grand jury list has been compiled, the sequence in which the lists are to be used shall be designated by the clerk according to the sequence of drawing. The names on the certified lists shall be open to public inspection, after redaction of addresses and other personal information and identifiers, subject to orders of the court.”

SECTION 5. Section 612-17, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whenever a judge requires the services of a trial jury for use in proceedings before the judge or any other judge of the circuit, the judge may order the required number of jurors from the clerk. Upon receipt by the judge of the envelopes containing the juror qualification forms, they shall be made available to the litigants concerned~~[-]~~; provided that the jurors' social security number, driver's license number and home and business telephone numbers are first redacted. Litigants and their attorneys shall not further divulge the forms or the contents of the forms except when questioning prospective jurors in conjunction with the juror selection process.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

ACT 93

H.B. NO. 2349

A Bill for an Act Relating to Authorized Emergency Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291C-26, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291C-26]]~~ **Authorized emergency vehicles.** (a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm~~[-]~~ and vehicles used by police officers while in the performance of a police function, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

- (1) Park or stand irrespective of the provisions of this chapter;
- (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- (3) Exceed the maximum speed limits so long as the driver does not endanger life or property;
- (4) Disregard regulations governing direction of movement or turning in specified directions~~[-]~~;
- (5) Drive on the shoulder and median of roadways; and
- (6) Drive in controlled-access roadways, highways, and facilities.

(c) The exemptions granted in this ~~[section]~~ subsection (b)(5) and (6) to an authorized emergency vehicle shall apply only when the vehicle is making use of authorized audible and visual signals, except as otherwise provided by county ordinance. This subsection shall not apply to police motorcycles.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall ~~[such]~~ those provisions protect the driver from the consequences of the driver's reckless disregard for the safety of others.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2002.)



A Bill for an Act Relating to Tobacco.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 245-9, Hawaii Revised Statutes, is amended to read as follows:

**“§245-9 Inspection.** (a) The department and the attorney general may examine all records, including tax returns and reports under section 245-31, required to be kept or filed under this chapter, and books, papers, and records of any person engaged in the business of wholesaling or dealing cigarettes and tobacco products, to verify the accuracy of the payment of the taxes imposed by this chapter. Every person in possession of any books, papers, and records, and the person’s agents and employees, are directed and required to give the department and the attorney general the means, facilities, and opportunities for the examinations.

(b) The department and the attorney general may inspect the operations, premises, and storage areas of any entity engaged in the sale of cigarettes, or the contents of a specific vending machine, during regular business hours. This inspection shall include inspection of all statements, books, papers, and records in whatever format, including electronic format, pertaining to the acquisition, possession, transportation, sale, or use of packages of cigarettes and tobacco products other than cigarettes, to verify the accuracy of the payment of taxes imposed by this chapter, and of the contents of cartons and shipping or storage containers to ascertain that all individual packages of cigarettes have an affixed stamp of proper denomination as required by this chapter. This inspection may also verify that all stamps were produced under the authority of the department. Every entity in possession of any books, papers, and records, and the entity’s agents and employees, are directed and required to give the department and the attorney general the means, facilities, and opportunities for the examinations. For purposes of this chapter “entity” means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

(c) If the department or the attorney general has reasonable cause to believe and does believe that cigarettes, stamps, or counterfeit stamps are being acquired, possessed, transported, kept, sold, or offered for sale in violation of this chapter, the department or the attorney general may investigate or search the vehicle or premises in which the cigarettes, stamps, or counterfeit stamps are believed to be located. If cigarettes, stamps, or counterfeit stamps are found in a vehicle, premises, or vending machine in violation of this chapter the cigarettes, vending machine, vehicle, stamps, counterfeit stamps, or other tangible personal property containing those cigarettes, stamps, or counterfeit stamps and any books and records in possession of the entity in control or possession of the cigarettes, stamps, or counterfeit stamps may be seized by the department or the attorney general and are subject to forfeiture as provided in this chapter and chapter 712A.

(d) For purposes of this chapter:

“Counterfeit stamp” means any stamp that is not printed, manufactured, distributed, or made by authority of the department.

“Vehicle” means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.”

SECTION 2. Section 245-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Enforcement of this part shall be under the jurisdiction of the attorney general. The attorney general may seek assistance in the enforcement of this part from other law enforcement agencies.”

SECTION 3. Act 249, Session Laws of Hawaii 2000, is amended by amending section 20 to read as follows:

- “SECTION 20. This Act shall take effect upon its approval; provided that[:(1) Sections] sections 15 and 16 shall take effect on July 1, 2000[;and (2) On June 30, 2006, this Act shall be repealed and sections 245-1, 245-3, 245-5, 245-6, 245-7(b) and (c), 245-8(a), 245-9, 245-15, 712A-5(1), and 712A-16(1), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act].”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 95

H.B. NO. 2453

A Bill for an Act Relating to the Capital Loan Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii capital loan program provides low interest rate loans to small businesses that face barriers in obtaining commercial financing. In counties with a population of less than 150,000, the borrowers are charged an interest rate of three per cent below the local bank prime rate, or five and one-half per cent a year, whichever is lower. In counties with a population exceeding 150,000, the borrowers are charged an interest rate of one per cent below the local bank prime rate, or seven and one-half per cent a year, whichever is lower. Section 210-6, Hawaii Revised Statutes, limits the adjustment of the local bank prime rate to once every six months. Following the tragic incidents in New York and Virginia on September 11, 2001, the Federal Reserve Board has twice lowered the federal fund rates that are the basis for the local bank prime rate. The legislature finds that the effectiveness of the Hawaii capital loan program is hampered by the ability to adjust the loan interest rate only once every six months. Accordingly, the purpose of this Act is to allow the Hawaii capital loan program's interest rate to be adjusted on the first of each month so that it can better reflect the current rapidly changing financial market.

SECTION 2. Section 210-6, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The department may make loans to business concerns located in a county with a population of less than 150,000; provided that the interest on loans made under this subsection shall bear simple interest at the rate of three per cent below the prime rate or at a rate of five and one-half per cent a year, whichever is lower. For purposes of this subsection, the prime rate shall be determined on [January 1 and July 1 of each year,] the first day of each month, and shall be the rate charged by the two largest banks in the State of Hawaii identified by the department of commerce and consumer affairs. Should there be a difference in rate charged by

the institutions, the lower of the two shall be used. Payments required under loans made under this subsection may be deferred, but no loans made under this subsection shall be forgiven.

(c) Except as may be expressly provided otherwise for loans made under subsection (b), the foregoing powers shall be subject to the following restrictions and limitations:

- (1) No loans shall be granted unless financial assistance is not available to the applicant. The condition may be waived by the director for participation loans or loan guarantees with a private financial institution;
- (2) The amount of the loan or loans to any one applicant at any one time shall in no case exceed a total of \$1,000,000;
- (3) No loan shall be made for a term exceeding twenty years;
- (4) Within counties of a population exceeding 150,000, each loan shall bear simple interest at a rate of one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is lower. For purposes of this paragraph, the prime rate shall be determined on ~~[January 1 and July 1 of each year,]~~ the first day of each month, and shall be the rate charged by the two largest banks in the State identified by the department of commerce and consumer affairs. Should there be a difference in rate charged by the institutions, the lower of the two shall be used;
- (5) The commencement date for the repayment of the first installment on the principal of each loan may be deferred by the director, but in no event shall such initial payment be deferred in excess of five years; and
- (6) The payment of interest on the principal of a loan may be deferred by the director, but in no event shall interest payments be deferred in excess of two years from the date of issuance of the loan."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 96

H.B. NO. 2537

A Bill for an Act Relating to Aquatic Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 187A-6, Hawaii Revised Statutes, is amended to read as follows:

**"§187A-6 [Permits for taking aquatic life for scientific, educational, or propagation purposes.] Special activity permits.** (a) Notwithstanding the provisions of any other law, the department may take aquatic life or possess or use any fishing gear for scientific, educational, management, or propagation purposes, [except as prohibited by] for removal of aquatic species, or for implementing the powers and duties as described by section 187A-2; subject to chapter 195D. The department shall consider using chemicals or electrofishing devices only when it has determined that no other reasonable alternative would be appropriate. The application of chemicals or operation of electrofishing devices shall be in accordance with

established procedures and with the proper training to ensure that the intended results are achieved.

(b) Notwithstanding the provisions of any other law, the department may issue permits, not longer than one year in duration, to any person to [fish or] take aquatic life, possess or use fishing gear, or engage in any feeding, watching, or other such non-consumptive activity related to aquatic resources, otherwise prohibited by law, in any part of the State, for scientific, educational, management, or propagation purposes, [except as prohibited by] subject to chapter 195D and subject to those restrictions the department deems desirable. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

(c) The department may adopt rules pursuant to chapter 91 for the purpose of this section.

(d) For the purposes of this section, unless the context clearly indicates otherwise:

“Fishing gear” means any device, including the use of any chemical or electricity that is either designed to take aquatic life or could be used to take aquatic life.”

SECTION 2. Section 188-23, Hawaii Revised Statutes, is amended to read as follows:

**“§188-23 Possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited; exception.** (a) It is unlawful to possess or use on, in, or near state waters, any explosives, ~~[blasting fuse caps,]~~ electrofishing devices, or any source of electrical energy with appurtenant devices for the introduction of electricity into the water, for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department. The department may issue permits for the possession or use of electrofishing devices [and explosives] consistent with other legal requirements.

(b) It is unlawful to deposit in, permit to pass into, or place where it can pass into the state waters for the purpose of taking aquatic life any of the following:

- (1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance;
- (2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders;
- (3) Preparations containing rotenone, tephrosin, saponins, or plant materials from Barringtonia acutangula, Barringtonia asiatica, Barringtonia racemosa, Barringtonia longiracemosa, Barringtonia speciosa, Careya australis, Cocculus ferrandianus, Cocculus trilobus, Cocos nucifera, Hura crepitans, Hura polyandra, Piscidia acuminata, Piscidia carthagenensis, Piscidia erythrina, Planchonia careya, Tephrosia purpurea, Tephrosia piscatoria, Wikstroemia; and
- (4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

The department may issue permits to allow the possession or use of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

## ACT 97

The possession or use of these substances without a permit by any person on, in, or near the water where [fish] aquatic life can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section.

The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

Nothing in this section shall be held or construed to be an amendment of the rules of the department of transportation."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 97

H.B. NO. 2563

A Bill for an Act Relating to Compensation of Crime Victims.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 351-62, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No compensation shall be awarded under this chapter in an amount in excess of \$10,000[-]; provided that, if a case involves compensable medical expenses in excess of \$10,000, no compensation shall be awarded in excess of \$20,000 or the actual amount of compensable medical expenses, whichever is lower. In determining the amount of compensable medical expenses to be awarded, the commission shall deduct amounts or benefits as provided under section 351-63."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 98

H.B. NO. 2569

A Bill for an Act Relating to the Conformity of the State Tax Laws to the United States Constitution.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to avoid constitutionally prohibited multiple taxation by providing an offset for taxes paid to another state where the general excise tax is imposed upon a transaction that has been subject to a sales or use tax in another state or taxing jurisdiction.

SECTION 2. Section 237-22, Hawaii Revised Statutes, is amended to read as follows:

**“§237-22 Conformity to Constitution, etc. (a)** In computing the amounts of any tax imposed under this chapter, there shall be excepted or deducted from the values, gross proceeds of sales, or gross income so much thereof as, under the Constitution and laws of the United States, the State is prohibited from taxing, but only so long as and only to the extent that the State is so prohibited.

**(b)** To the extent that any deduction, allocation, or other method to determine tax liability is necessary to comply with subsection (a), each taxpayer liable for the tax imposed by this chapter shall be entitled to full offset for the amount of legally imposed sales, gross receipts, or use taxes paid by the taxpayer with respect to the imported property, service, or contracting to another state and any subdivision thereof; provided that such offset shall not exceed the amount of general excise tax imposed under this chapter upon the gross proceeds of sales or gross income from the sale and subsequent sale of the imported property, service, or contracting. The amount of legally imposed sales, gross receipts, or use taxes paid by the taxpayer with respect to the import shall be first applied against any use tax, as permitted under section 238-3(i), and any remaining amount may be applied under this section for the same imported property, service, or contracting.

The director of taxation shall have the authority to implement this offset by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability to the extent necessary to comply with the foregoing.

The director of taxation may require the taxpayer to produce the necessary receipts or vouchers indicating the payment of the sales, gross receipts, or use taxes to another state or subdivision as a condition for the allowance of this offset.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval, and shall apply to all open tax years and for tax years that are pending appeal at the time of approval.

(Approved May 31, 2002.)

## ACT 99

H.B. NO. 2708

A Bill for an Act Relating to Animal Diseases.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Dairy, beef, pork, egg and poultry production are significant contributors to diversified agriculture in Hawaii. The livestock industries are integral parts of Hawaii's economy and culture, generating \$70,000,000 in farm gate value alone and contributing to the undeveloped vista appreciated throughout the State.

The legislature realizes that Hawaii's livestock and poultry industries could be severely affected by the introduction of highly contagious animal diseases such as foot and mouth disease, classical swine fever, avian influenza, and exotic Newcastle's disease circulating worldwide. It is recognized that the authority to quickly and effectively control and eradicate such diseases is necessary to reduce losses and minimize adverse consequences to state and national livestock industries.

Additional critical actions to prevent the spread of a highly contagious disease agent include the proper disposal of animal carcasses and disinfection of

premises and affected materials. In the case of certain highly contagious foreign animal diseases such as foot and mouth disease, authority to immediately eliminate susceptible species in a buffer zone around an affected area is critical.

In addition to affecting livestock, an outbreak of a highly contagious animal disease could directly affect wildlife by causing clinical disease or death. Equally significant is the probability that the establishment of a highly contagious animal disease in Hawaii's wildlife could heavily impact disease control programs and make it virtually impossible for livestock and poultry producers to continue business. Therefore, control measures may be required for wildlife in an infected area or surrounding buffer zone if wildlife is identified as a risk factor for disease spread. Such decisions regarding wildlife action would be made by agreements between the department of agriculture and wildlife management agencies.

The purpose of this Act is to authorize the department of agriculture to quarantine all animals infected, exposed, or susceptible to any contagious, infectious, or communicable disease, and to destroy the same, when, in the opinion of the department, such measures are necessary to prevent the spread of diseases or agents harmful to livestock or public health. In addition, this Act requires that animal carcasses and hides are properly disposed of and that affected premises and materials are adequately disinfected.

SECTION 2. Section 142-6, Hawaii Revised Statutes, is amended to read as follows:

**“§142-6 Quarantine.** The department of agriculture may quarantine any [~~domestic~~] animal known to be affected with [~~or~~], to have been exposed to, or to be susceptible to, any contagious, infectious, or communicable disease, and destroy the same, when in the opinion of the department, such measure is necessary to prevent the spread of the disease[~~; and provide for the proper disposition of its hide and carcass; and disinfect premises where the disease may have existed~~]. The department of agriculture may also require disinfection of premises and materials contaminated by or exposed to disease, including the proper disposition of hides and carcasses if, in the opinion of the department, such measures are necessary to prevent the spread of disease.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 100

S.B. NO. 2052

A Bill for an Act Relating to Special Purpose Revenue Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 39A-52, Hawaii Revised Statutes, is repealed.

SECTION 2. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and is for the public health, safety, and general welfare.

SECTION 3. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$80,000,000 in one or more series for the purpose of assisting Hawaii Pacific Health, a Hawaii corporation, and one or more of its not-for-profit affiliates with financing, refinancing, and reimbursing costs related to the acquisition or construction of health care facilities including, without limitation:

- (1) Costs related to the acquisition of Straub Hospital pursuant to the affiliation of Hawaii Pacific Health and Straub Clinic and Hospital;
- (2) Renovation of existing health care facilities;
- (3) Acquisition of equipment;
- (4) Purchase of tangible assets including land and improvements;
- (5) Acquisition and installation of information technology; and
- (6) Other capital-related projects for Hawaii Pacific Health and any one or more of its not-for-profit affiliates.

The legislature hereby finds and determines that the activities and facilities of Hawaii Pacific Health and its affiliates constitutes a “project” as defined in part II of chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to health care facilities.

SECTION 4. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to chapter 39A, part II, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2007, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 3, and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 3. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2007.

SECTION 7. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.



A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the cessation of sugar operations in Hawaii has resulted in the loss of jobs and revenues to the State, the counties, and the citizens of Hawaii. The land formerly devoted to the growing of sugar cane is now available for commercial growing of a diverse number of crops, including macadamia seedlings, macadamia trees, and their kernel crop. The establishment of new facilities in the State to process macadamia nuts and to manufacture and produce macadamia products would support the development of macadamia nursery and farming operations and the marketing and sale of macadamia nuts locally and for export. These facilities would create an estimated one hundred new jobs directly in the processing and production operations, as well as additional new jobs in related nursery, farming, marketing, and sales operations. Due to economic conditions in the State, and the loss of many agricultural jobs, the creation of new jobs is imperative at this time.

The legislature also finds that it is particularly in the public interest to encourage and promote the development of new agriculture-related enterprises where and when that opportunity presents itself. Facilities such as those proposed by Hawaii Macadamia Tree, Incorporated, in the county of Hawaii, that can process macadamia nuts and manufacture and produce macadamia products for use locally and for export are the type of enterprises that will provide such an opportunity for our State.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$10,000,000, in one or more series, for the purpose of assisting Hawaii Macadamia Tree, Incorporated, a Hawaii corporation, to finance the establishment of facilities in the county of Hawaii to process macadamia nuts and to manufacture and produce macadamia products. The legislature hereby finds and determines that the planning, design, construction, and equipping of facilities to process macadamia nuts and to manufacture and produce macadamia products constitute an industrial project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2005, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the

refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2005.

SECTION 6. This Act shall take effect upon<sup>1</sup> July 1, 2002.

(Approved May 31, 2002.)

**Note**

1. So in original.

**ACT 102**

S.B. NO. 2802

A Bill for an Act Relating to Leasing of Public Lands to Renewable Energy Producers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 171-95, Hawaii Revised Statutes, is amended to read as follows:

**“§171-95 Disposition to governments, governmental agencies, [and] public utilities[.], and renewable energy producers.** (a) Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction:

- (1) Sell public lands at such price and on such other terms and conditions as the board may deem proper to governments, including the United States, city and county, counties, other governmental agencies authorized to hold lands in fee simple and public utilities;
  - (2) Lease to the governments, agencies, [and] public utilities, and renewable energy producers public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the board may determine;
  - (3) Grant licenses and easements to the governments, agencies, [and] public utilities, and renewable energy producers on such terms and conditions as the board may determine for road, pipeline, utility, communication cable, and other rights-of-way;
  - (4) Exchange public lands with the governments and agencies;
  - (5) Execute quitclaim deeds to the governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the State; and
  - (6) Waive or modify building and other requirements and conditions contained in deeds, patents, sales agreements, or leases held by the governments and agencies whenever such waiver or modification is beneficial to the State.
- (b) In any disposition to public utilities under this section:
- (1) The sale price or lease rental shall be no less than the value determined in accordance with section 171-17(b); ~~provided[.], however,~~ that such sale price or lease rental may be on a nominal basis, if the board finds

that such easement is required in connection with a government project[.];

- (2) The board shall provide that in case the land ceases to be used at any future time for the use for which the disposition was made, the board shall have the right to repurchase the land at the original sale price or fair market value, whichever is lower, and to purchase improvements thereon at the depreciated value or fair market value, whichever is lower[.];
- (3) Disposition shall not be made to any public utility if the utility has suitable lands of its own[.];
- (4) The disposition to public utilities shall be subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular or special session next following the date of the disposition[.]; and
- (5) For the purposes of this section, the definition of "public utility" as [established] defined in section 269-1 is hereby incorporated herein by reference.

(c) For the purposes of this section, "renewable energy producer" means any producer of electrical energy produced by wind, solar energy, hydropower, landfill gas, waste-to-energy, ocean thermal energy conversion, wave energy, biomass including municipal solid waste, biofuels or fuels derived from organic sources, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to an electric utility company regulated under chapter 269. Up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility may be derived from fossil fuels."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved May 31, 2002.)

## ACT 103

S.B. NO. 2804

A Bill for an Act Relating to Subleasing of Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 261, Session Laws of Hawaii 2000, is amended as follows:

1. By amending section 2 to read:

"SECTION 2. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided by law, the following restrictions shall apply to all leases:

- (1) Options for renewal of terms are prohibited;
- (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate

Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;

- (3) No lease shall be made for any land under a lease which has more than two years to run;
- (4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county;
- (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;
- (6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that ~~[prior]~~:
  - (1) Prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; ~~[provided further that in]~~
  - (2) In the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; ~~[provided further that the]~~
  - (3) The board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward; and
  - (4) The board may waive the requirement to obtain approval for good cause;
- (7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise; and
- (8) Mineral and metallic rights and surface and ground water shall be reserved to the State."

2. By amending section 5 to read:

~~[the]~~ "SECTION 5. This Act shall take effect upon its approval; provided that

- (1) The authority granted to the department of land and natural resources to enter into lease agreements with owners of private residential noncommercial piers shall be repealed on June 30, 2005~~[-, and the]~~;
- (2) The amendments made by sections 1~~[-, 2]~~ and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of ~~[that date]~~ June 30, 2005, and ~~[sections 171-36(a) and]~~ section 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in which ~~[they]~~ it read on the day prior to the effective date of this Act; ~~[provided further that any]~~;<sup>1</sup>

- (3) The amendment made by section 2 of this Act to section 171-36(a), which deleted paragraph (9), shall be repealed as of June 30, 2005, and paragraph (9) shall be reenacted in the form in which it read on June 19, 2000; and
- (4) Any lease agreement executed pursuant to this Act prior to June 30, 2005, or any lease extension executed thereon after the repeal of this Act, shall remain exempt from section 171-36(a)(9), Hawaii Revised Statutes, after the repeal of this Act.’’

SECTION 3.<sup>1</sup> Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4.<sup>1</sup> This Act shall take effect upon its approval.

(Approved May 31, 2002.)

**Note**

- 1. So in original.

**ACT 104**

H.B. NO. 682

A Bill for an Act Relating to Contests of Occupational Safety and Health Matters.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-20, Hawaii Revised Statutes, is amended to read as follows:

**“§26-20 Department of labor and industrial relations.** The department of labor and industrial relations shall be headed by a single executive to be known as the director of labor and industrial relations.

The department shall administer programs designed to increase the economic security, physical and economic well-being, and productivity of workers, and to achieve good labor-management relations, including the administration of workers’ compensation, employment security, apprenticeship training, wage and hour, and industrial relations laws. The department shall also have the function of developing, preparing, and disseminating information on employment, unemployment, and general labor market conditions.

The labor and industrial relations [appeal] appeals board provided for in chapters 371 and 386 is placed within the department of labor and industrial relations for administrative purposes. The respective functions, duties, and powers, subject to the administrative control of the director of labor and industrial relations, and the composition of the board shall be as heretofore provided by law.

There shall be within the department of labor and industrial relations a board to be known as the Hawaii labor relations board as provided for in section 89-5, which shall exercise powers and duties in accordance with chapters 89 [and], 377[.], and 396. The director shall have general administrative supervision over the board, but shall not have the power to supervise or control the board in the exercise of its powers or duties.

The functions of mediation heretofore exercised by the commission of labor and industrial relations existing immediately prior to November 25, 1959, as provided in section 371-10, shall be exercised by the governor or the governor’s designated agent.

The director may establish within the department of labor and industrial relations a committee to be known as the apprenticeship council which shall sit in an advisory capacity to the director of labor and industrial relations on matters within the jurisdiction of the department of labor and industrial relations relating to apprenticeship programs. The membership and organization of the council shall be determined by the director.

[The functions and authority heretofore exercised by the department of labor and industrial relations, Hawaii labor relations board, and apprenticeship council as heretofore constituted are transferred to the department of labor and industrial relations established by this chapter.]”

SECTION 2. Section 396-3, Hawaii Revised Statutes, is amended by amending the definition of “appeals board” to read as follows:

““Appeals board” means the [labor and industrial relations appeals] Hawaii labor relations board.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 105

H.B. NO. 2302

A Bill for an Act Relating to Motor Vehicle Drivers’ Licenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to provide judges with the discretion, in cases where good cause is shown, to permit individuals to obtain conditional drivers’ licenses, when these individuals either have outstanding traffic or motor vehicle insurance violations, or are satisfying sentences for violation of the traffic or motor vehicle insurance laws and are complying with fine payment and community service work schedules imposed by the courts for such violations.

SECTION 2. Section 286-109, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Statutes of limitations and other provisions of this chapter notwithstanding, no driver’s license or instruction permit shall be issued or renewed under this section, where the examiner of drivers is notified by the district judge, traffic violations bureaus of the district courts, or the judge of the circuit court that the applicant has failed to respond to a traffic citation or summons, or failed to appear in court after an arrest for the violation of any traffic laws of a county, this chapter or chapter 286G, 287, 290, 291, or 291C, or of any motor vehicle insurance laws under article 10C of chapter 431, or of any motorcycle or motor scooter insurance laws under article 10G of chapter 431, and the same remains delinquent and outstanding, or the applicant, [having timely responded initially,] has as of the time of the application, failed to comply in full with all orders of the court[-]; provided that the district court with whose order an applicant has failed to comply in full, may approve the issuance or renewal of a driver’s license or instruction permit other than a commercial driver’s license upon conditions imposed by the court for the satisfac-

tion of the outstanding court order and any other conditions as may be imposed by the court, if one or more of the following conditions are met:

- (1) The applicant is gainfully employed in a position that requires driving and will be discharged if the applicant is unable to drive; or
- (2) The applicant has no access to alternative transportation and therefore must drive to work;

provided further that if the applicant has failed to comply in full with orders of the district court of more than one circuit, the applicant shall obtain the approval of the district court of each circuit in which the applicant has an outstanding court order before a driver's license or instruction permit may be issued or renewed under this subsection.

A driver's license or instruction permit issued or renewed under this subsection shall be subject to immediate suspension by the court upon the applicant's failure to remain in full compliance with all conditions imposed by the court for the issuance or renewal of the driver's license or instruction permit. The examiner of drivers may place an indication of restriction upon a driver's license or instruction permit issued or renewed under this subsection. Proof of financial responsibility under section 287-20 shall not apply to the issuance or renewal of driver's licenses or instruction permits under this subsection."

SECTION 3. Section 291D-12, Hawaii Revised Statutes, is amended to read as follows:

**"§291D-12 Powers of the district court judge sitting in the traffic division.** A district court judge sitting in the traffic division and hearing cases pursuant to this chapter shall have all the powers of a district court judge under chapter 604, including the following powers:

- (1) To conduct traffic infraction hearings and to impose monetary assessments;
- (2) To permit deferral of monetary assessment or impose community service in lieu thereof;
- (3) To dismiss a notice of traffic infraction or to set aside a judgment for the State;
- (4) To order temporary driver's license suspension or license reinstatement;
- (5) To order the director of finance not to issue or renew the driver's license or to register, renew the registration of, or issue title to a motor vehicle of any person who has not paid a monetary assessment or performed community service in lieu thereof;
- (6) To approve the issuance or renewal of a driver's license or instruction permit pursuant to section 286-109(c);
- ~~(6)~~ (7) To issue penal summonses and bench warrants and initiate contempt of court proceedings in proceedings conducted pursuant to section 291D-13; and
- ~~(7)~~ (8) To exercise other powers the court finds necessary and appropriate to carry out the purposes of this chapter."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2003.

(Approved May 31, 2002.)

## ACT 106

H.B. NO. 2329

A Bill for an Act Relating to Managed Competition.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 46-36, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§46-36]]~~ Authority of counties to engage in the process of managed competition; established.** (a) Subject to the approval of the governor and the respective mayor of the county, the agency designated by the mayor with the responsibility to oversee the managed process for public-private competition for government services shall:

- (1) Assist the mayor in formulating the county’s philosophy for public collective bargaining and for the managed process for public-private competition for government services, including which particular service can be provided more efficiently, effectively, and economically considering all relevant costs; and
- (2) Coordinate and negotiate the terms and conditions of the managed competition process on behalf of the county with exclusive representatives of affected public employees and private contractors.

(b) If a county executes a contract with a private contractor pursuant to the managed competition process authorized under this section, the county may use the layoff provisions of the civil service laws and the respective collective bargaining contracts to release employees displaced from their positions by the managed competition process. Prior to implementing any layoff provision of the civil service laws or a collective bargaining contract, the county shall use its resources for placing, retraining, and providing voluntary severance incentives for displaced employees. Methods that may be used to minimize or avoid the adverse effects of an agency’s decision to secure needed services from contractors may include:

- (1) Coordination with the private service provider awarded the contract under this section to continue a displaced employee’s employment as an employee of the contractor;
- (2) Reassignment to another civil service position the employee is qualified to fill;
- (3) Retraining to qualify the employee for reassignment; and
- (4) Severance incentives.

(c) As used in this section, “managed competition” means the process established in this section by which the county and a private contractor compete to provide government services.”

SECTION 2. Section 89A-1, Hawaii Revised Statutes, is amended to read as follows:

**“§89A-1 Office of collective bargaining and managed competition.** (a) There shall be established an office of collective bargaining and managed competition in the office of the governor to assist the governor in implementation and review of the managed process of public-private competition for particular government services through the managed competition process and negotiations between the State and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment.

(b) The position of chief negotiator for the State is hereby established to head the office. The chief negotiator shall be experienced in labor relations. The governor



shall appoint the chief negotiator and may also appoint deputy negotiators to assist the chief negotiator. The governor, at pleasure, may remove the chief negotiator and any deputy negotiator. All other employees shall be appointed by the chief negotiator. All employees in the office of collective bargaining and managed competition shall be included in any benefit programs generally applicable to employees of the State.

(c) Subject to the approval of the governor, the office of collective bargaining and managed competition shall:

- (1) Assist the governor in formulating the State's philosophy for public collective bargaining and for the managed process for public-private competition for government services, including which particular service can be provided more efficiently, effectively, and economically considering all relevant costs; and
- (2) Coordinate and negotiate the managed competition process on behalf of the State with exclusive representatives of affected public employees and private contractors.

(d) No employee of the office of collective bargaining and managed competition shall be included in the civil service, any civil service classification system, or any appropriate bargaining unit; provided that any civil service position in existence on July 1, 2002, shall not be exempted from civil service until the incumbent in that position on July 1, 2002, vacates that position.

(e) If the State executes a contract with a private contractor pursuant to the managed competition process authorized under this section, the State may use the layoff provisions of the civil service laws and the respective collective bargaining contracts to release employees displaced from their positions by the managed competition process. Prior to implementing any layoff provision of the civil service laws or a collective bargaining contract, the State shall use its resources for placing, retraining, and providing voluntary severance incentives for displaced employees. Methods that may be used to minimize or avoid the adverse effects of an agency's decision to secure needed services from contractors may include:

- (1) Coordination with the private service provider awarded the contract under this section to continue a displaced employee's employment as an employee of the contractor;
- (2) Reassignment to another civil service position the employee is qualified to fill;
- (3) Retraining to qualify the employee for reassignment; and
- (4) Severance incentives.

(f) As used in this section, "managed competition" means the process established in this section by which the State and a private contractor compete to provide government services."

SECTION 3. Section 89A-2, Hawaii Revised Statutes, is amended to read as follows:

**"[§89A-2] Functions of the office of collective bargaining[.] and managed competition.** In addition to the powers and functions provided in other sections of this chapter, and subject to the approval of the governor, the office of collective bargaining and managed competition shall:

- (1) Assist the governor in formulating plans, including objectives, criteria to measure management's accomplishment of objectives, and programs through which the objectives are to be attained;
- (2) Assist the governor in formulating management's philosophy for public collective bargaining as well as planning bargaining strategies;

- (3) Conduct negotiations with the exclusive representatives of each employee organization and designate employer spokespersons for each negotiation;
- (4) Coordinate the State's resources in all mediation, fact-finding and interest arbitration cases as well as in all labor disputes;
- (5) Conduct systematic reviews of collective bargaining agreements for the purpose of contract negotiations;
- (6) Coordinate the systematic compilation of data by all agencies that is required for negotiating purposes;
- (7) Coordinate the establishment of cost data negotiated with each exclusive representative and assist the governor in making recommendations with respect thereto to the legislative bodies;
- (8) Prepare and submit an annual report and such other reports as may be requested to the governor and to the legislature on the implementation of the collective bargaining act."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

## ACT 107

H.B. NO. 2459

A Bill for an Act Making Emergency Appropriation for Social Security/Medicare Expenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 259, Session Laws of Hawaii 2001, appropriated a certain designated sum to the department of budget and finance for the payment of the social security/medicare expenses, as set forth in part VI of chapter 88, Hawaii Revised Statutes, for the fiscal year beginning July 1, 2001, and ending June 30, 2002.

Section 5 of Act 259, Session Laws of Hawaii 2001, authorizes the governor to transfer up to \$15,000,000 in general funds to tourism (BED 113) for the operation and events of the Hawaii convention center. The department of budget and finance will expend all moneys appropriated for the social security/medicare costs before the end of the fiscal year, which includes transfer of funds to the Hawaii convention center. The department of budget and finance will be unable to meet its fiscal obligation to satisfy the State's obligation to provide for social security/medicare expenses.

The purpose of this Act is to appropriate moneys to satisfy the State's statutory requirement relating to the social security/medicare expenses.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,125,000 or so much thereof as may be necessary for fiscal year 2001-2002 to defray the social security/medicare expenses of the public employees' retirement program.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

ACT 108

H.B. NO. 2480

A Bill for an Act Relating to School Bus Fares.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The department of education contracts school busing services for students who qualify for such services in accordance with its administrative rules. The rules are in the process of being amended to address concerns relating to the identification of students who ride school buses without payment, to improve the accountability for school bus fares paid by student riders, and to address the operating budget deficit.

To address these concerns, the proposed administrative rule amendments will require schools to collect bus fares from student riders. Currently, approximately five hundred thirty school bus drivers collect bus fares from students twice each day. An average amount of collections is deducted from school bus contractors' gross amount and the contractor is compensated the net amount. Under the proposed change, contractors will no longer collect bus fares. When schools collect bus fares, the moneys will need to be deposited into a revolving fund and made available to disburse to contractors as a part of their compensation for services provided.

The purpose of this Act is to establish a revolving fund for the deposit of school bus fares.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- School bus fare revolving fund.** (a) There is established in the state treasury the school bus fare revolving fund, into which shall be deposited all moneys received from students and parents or guardians of students by public schools for state-provided school busing services, as authorized by section 302A-406.

(b) Except as otherwise provided by the legislature, moneys in the school bus fare revolving fund shall be used for school busing services, as authorized by section 302A-406.”

SECTION 3. Section 302A-407, Hawaii Revised Statutes, is amended to read as follows:

**“[[§302A-407]] School bus contracts.** (a) Any other law to the contrary notwithstanding, school bus contracts between the State and a private contractor may be extended for two years by mutual agreement; provided that the parties may agree to extend the contract for an additional two years thereafter. The compensation due to the contractor by the State for each extended year may be increased by an amount not to exceed five per cent of the previous year's compensation. In addition, the compensation due to the contractor by the State for any original or extended contract year may be increased by a reasonable amount for unanticipated inflation-

ary increases in the cost of fuel. If the original contract between the State and a private contractor already includes an option to extend the contract period, this subsection shall apply after the contract option is exercised.

(b) In the renegotiation for the extension of any contract, the contractor shall be notified at least three months in advance to prepare data and facts relating to fuel cost for the justification of an increase in the amount for the new contract period.

(c) If a school is temporarily closed due to an unexpected disruption necessitating the closing of the school, the contractor and the State may enter into renegotiation for payments of fixed costs.

(d) The contract between the State and the contractor shall include an age limit for the school bus vehicles that may be used. The serviceability of a vehicle shall be determined by chapter 286.

(e) The contract between the State and the contractor shall include a provision requiring the contractor to equip the contractor's vehicles with the signs and visual signals described in section 291C-95(d) and (g). The contract shall also include other provisions as may be deemed necessary by the State for the safety of school bus passengers and shall include provisions requiring periodic refurbishment of school buses over ten years old.

(f) All moneys received from students and parents or guardians of students by public schools for state-provided school busing services, as authorized by section 302A-406, shall be deposited into the school bus fare revolving fund. Except as otherwise provided by the legislature, expenditures for the operation of state-contracted school bus services, as authorized by section 302A-406, shall be made from this fund."

SECTION 4. There is appropriated out of the school bus fare revolving fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2002-2003 to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 109**

H.B. NO. 2495

A Bill for an Act Making an Emergency Appropriation for the Department of Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 259, Session Laws of Hawaii 2001, appropriated a sum of money to the department of human services to provide funds for child welfare

services under the department's social services division for the fiscal period beginning July 1, 2001, and ending June 30, 2002.

A critical funding emergency exists. The department of human services is mandated by both state and federal statute to provide foster care to abused and neglected children and to find permanent homes for those children who are unable to return to their original homes. Foster board and board-related costs, permanency assistance, and difficulty-of-care payments for foster and adoptive parents, permanent custodians, and guardians of children with special needs must be paid to support child placements.

In order to comply with the department's mandates, additional funds are urgently needed.

SECTION 3. There is appropriated or authorized from the sources of funding indicated below, the following sums or so much thereof as may be necessary for fiscal year 2001-2002 to provide foster board and board-related costs, permanency assistance, and difficulty-of-care payments for foster and adoptive parents, permanent custodians, and guardians of children with special needs:

General funds: \$2,268,663

Other federal funds: \$1,538,194

The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## **ACT 110**

H.B. NO. 2571

A Bill for an Act Relating to Taxation of Persons with Impaired Sight or Hearing or Who are Totally Disabled that are Engaged in Business.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to provide persons with impaired sight or hearing or who are totally disabled the same general excise tax benefits regardless of the entity in which they choose to do business.

Certain state tax benefits are available to persons with impaired sight or hearing or who are totally disabled. These provisions, however, may not be applicable depending on the entity in which impaired persons choose to do business. Currently, section 237-17, Hawaii Revised Statutes, provides a one-half per cent general excise tax rate for individuals with impaired sight or hearing or who are totally disabled, or corporations all of whose outstanding shares are owned by individuals with impaired sight or hearing or who are totally disabled. Similarly, section 237-24(13), Hawaii Revised Statutes, exempts from the general excise tax \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging in business.

This Act will provide the same general excise tax benefits to these persons regardless of the entity in which they choose to do business.

SECTION 2. Section 237-17, Hawaii Revised Statutes, is amended to read as follows:

**“§237-17 Persons with impaired sight, hearing, or who are totally disabled.** Anything in section 237-13 to the contrary notwithstanding, the privilege tax levied, assessed, and collected on account of the business or other activities of individuals who are blind, deaf, or totally disabled, [or] corporations all of whose outstanding shares are owned by individuals who are blind, deaf, or totally disabled, general, limited, or limited liability partnerships, all of whose partners are blind, deaf, or totally disabled, or limited liability companies, all of whose members are blind, deaf, or totally disabled, shall not exceed one-half of one per cent of the proceeds, sales, income, or other receipts subject to tax. For the purpose of this chapter “blind”, “deaf”, or “totally disabled” is defined as in section 235-1. The impairment of sight or hearing, or the disability, shall be certified to as provided in section 235-1.”

SECTION 3. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

**“§237-24 Amounts not taxable.** This chapter shall not apply to the following amounts:

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to the person, or to the person's character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);
- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on “liquid fuel” imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any Act of the Congress of the United States;
- (9) Taxes on liquor imposed by chapter 244D on dealers holding permits under that chapter;
- (10) The amounts of taxes on cigarettes and tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale;
- (11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;

- (12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;
- (13) An amount up to, but not in excess of, \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State; a corporation all of whose outstanding shares are owned by an individual or individuals who are blind, deaf, or totally disabled; a general, limited, or limited liability partnership, all of whose partners are blind, deaf, or totally disabled; or a limited liability company, all of whose members are blind, deaf, or totally disabled;
- (14) Amounts received by a producer of sugarcane from the manufacturer to whom the producer sells the sugarcane, where:
  - (A) The producer is an independent cane farmer, so classed by the Secretary of Agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented;
  - (B) The value or gross proceeds of sale of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1) or [237-43](2);
  - (C) The producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer; and
  - (D) The producer's gross proceeds of sales are reduced by reason of the tax on the value or sale of the manufactured products;
- (15) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes; and
- (16) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by such corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements; provided that such a cooperative corporation is a corporation:
  - (A) Having one and only one class of stock outstanding;
  - (B) Each of the stockholders of which is entitled solely by reason of the stockholder's ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation; and
  - (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2002, and shall apply to gross income and gross proceeds received after June 30, 2002.

(Approved May 31, 2002.)

## ACT 111

S.B. NO. 99

A Bill for an Act Relating to the Liquor Commission.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section<sup>1</sup> 281, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§281- Political activities of commission employees.** (a) A commission employee may support, advocate, or aid in the election or defeat of any candidate for public office, or run for public office; provided the employee:

- (1) Notifies the commission in writing of the employee’s intent to support, advocate, or aid in the election or defeat of a candidate for public office; and
- (2) If a candidate for public office, takes a leave of absence in accordance with chapter 79 for a period beginning prior to the initiation of political activities related to the candidacy and ending the day following the general election for the office.

(b) Notwithstanding chapter 11 or any other law to the contrary, no commission employee shall solicit or receive contributions, or receive or transfer money or anything of value from a licensee for the purpose of supporting, advocating, or aiding in the election or defeat of a candidate for public office. Violation of this subsection shall be:

- (1) Punishable by summary dismissal of the employee; and
- (2) Subject to penalties in accordance with section 11-228.”

SECTION 2. Section 11-228, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In the performance of its required duties, the commission may render a decision or issue an order affecting any person violating any provision of this subpart or section 281-\_\_\_\_ that shall provide for the assessment of an administrative fine in the manner prescribed as follows:

- (1) If a natural person, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure, whichever is greater; or
- (2) If a corporation, organization, association, or labor union, it shall be punished by a fine not exceeding \$1,000 for each occurrence; and
- (3) Whenever a corporation, organization, association, or labor union violates this subpart, the violation shall be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.”

SECTION 3. Section 281-17, Hawaii Revised Statutes, is amended to read as follows:

**“§281-17 Jurisdiction and powers.** (a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures or sells any liquor without being authorized pursuant to



- this chapter; provided that in counties which have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties ~~[[for]]~~ violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education; provided that any educational program shall be limited to licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees;
  - (4) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;
  - (5) Subject to chapters 76 and 77, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer~~[-. No employee of any commission, aside from exercising the right to vote, shall support, advocate, or aid in the election or defeat of any candidate for public office, and upon satisfactory proof of such prohibited activity the offender shall be summarily dismissed];~~
  - (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
  - (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
  - (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
  - (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
  - (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee;

- (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;
- (12) To prescribe, by rule, the term of any license of<sup>2</sup> solicitor's and representative's permit authorized by this chapter, the annual or prorated amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees; and
- (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.

(b) Subject only to this chapter, the commission or board and each member thereof shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining the witnesses as are possessed by a circuit court, except that the commission or board and each member thereof shall not be bound by the strict legal rules of evidence. In addition, the commission or board shall have the power to require the production of, and to examine any books, papers, and records of any licensee which may pertain to the licensee's business under the license or which may pertain to a matter at a hearing before the commission or board or to an investigation by the commission or board.

The exercise by the commission or board of the power, authority, and discretion vested in it pursuant to this chapter shall be final and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in this chapter or chapter 91."

SECTION 3.<sup>1</sup> Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>3</sup>

SECTION 4.<sup>1</sup> This Act shall take effect upon its approval.

(Approved May 31, 2002.)

#### Notes

- 1. So in original.
- 2. Prior to amendment "or" appeared here. "Of" should be underscored.
- 3. Edited pursuant to HRS §23G-16.5.

## ACT 112

S.B. NO. 2232

A Bill for an Act Relating to Kikala-Keokea.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 144, Session Laws of Hawaii 2001, amended chapter 171, Hawaii Revised Statutes, by adding a new section designated as section 171-19.5. Section 171-19.5, Hawaii Revised Statutes, established the infrastructure development fund in the state treasury to provide funding for infrastructure development in the Kikala-Keokea area on the island of Hawaii.

The purpose of this Act is to extend the lapse date of the appropriation in Act 144, Session Laws of Hawaii 2001, from 2002 to 2003.

SECTION 2. Act 144, Session Laws of Hawaii 2001, is amended by adding a new section to read as follows:

“SECTION 5A. Any unexpended or unencumbered balances of the appropriation made by section 5 of this Act to be expended in fiscal year 2001-2002, shall not lapse at the end of fiscal year 2001-2002; and the authorization to expend the appropriation shall be extended to June 30, 2003; provided that any unexpended or unencumbered balances of the appropriation under section 5 of this Act remaining at the close of business on June 30, 2004, shall be transferred to the credit of the Kikala-Keokea housing revolving fund pursuant to section 171-19.5, Hawaii Revised Statutes.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2002.

(Approved May 31, 2002.)

## ACT 113

S.B. NO. 2628

A Bill for an Act Relating to the Use of Intoxicants.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291E-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol, only after:

- (1) A lawful arrest; and
- (2) The person has been informed by a law enforcement officer of the sanctions under ~~[part III and]~~ section 291E-41 or 291E-65[-], as applicable to the offense.”

SECTION 2. Section 291E-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a person is arrested for a violation of section 291E-61 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for alcohol concentration, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test [or], a blood test, or both, pursuant to section 291E-11. In the case of a drug related offense, the person shall elect to take a blood test [or], a urine test, or both, pursuant to section 291E-11. The law enforcement officer also shall inform the person of the sanctions under ~~[this part,]~~ section 291E-41, including the sanction for refusing to take a breath, blood, or urine test. Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall

indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession."

SECTION 3. Section 291E-36, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-36 Documents required to be submitted for administrative review; sworn statements.** (a) Whenever a respondent has been arrested for a violation of section 291E-61 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
  - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;
  - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
  - (C) The respondent was informed of:
    - (i) The sanctions of ~~[this part;]~~ section 291E-41;
    - (ii) The possibility that criminal charges may be filed; and
    - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content; and
  - (D) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
  - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
  - (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
  - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:

- (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
- (B) The person followed the procedures established for conducting the test;
- (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
- (D) The person whose breath or blood was tested is the respondent;
- (4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
  - (A) The equipment used to conduct the test was approved for use in drug testing;
  - (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
  - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
  - (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
  - (B) The person followed the procedures established for conducting the test;
  - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
  - (D) The person whose blood or urine was tested is the respondent;
- (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
- (7) Any license, and motor vehicle registration and number plates if applicable, taken into possession by the law enforcement officer; and
- (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.
- (b) Whenever a respondent has been arrested for a violation of section 291E-61 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:
  - (1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:
    - (A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20;
    - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
    - (C) The respondent was informed of:
      - (i) The sanctions of ~~[this part;]~~ section 291E-41;
      - (ii) The possibility that criminal charges may be filed; and
      - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and
    - (D) The respondent refused to be tested;

- (2) A copy of the notice of administrative revocation issued to the respondent;
- (3) Any driver's license, and motor vehicle registration and number plates if applicable, taken into possession; and
- (4) A listing of all alcohol and drug enforcement contacts involving the respondent."

SECTION 4. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The director shall conduct the hearing and have authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive and determine the relevance of evidence;
- (4) Issue subpoenas~~[-take depositions, or cause depositions or interrogatories to be taken];~~
- (5) Regulate the course and conduct of the hearing; and
- (6) Make a final ruling."

SECTION 5. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) The sworn statements provided in section 291E-36 shall be admitted into evidence. The director shall consider the sworn statements in the absence of the law enforcement officer or other person. Upon written notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement officer or other person who made a sworn statement, the director shall issue a subpoena for the officer or other person to appear at the hearing. Personal service upon the law enforcement officer or other person who made a sworn statement shall be made no later than forty-eight hours prior to the hearing time. If the officer or other person cannot appear, the officer or other person at the discretion of the director, may testify by telephone."

SECTION 6. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (k) to read as follows:

"(k) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit, or temporary motor vehicle registration and temporary number plates, if applicable. For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week. The absence from the hearing of a law enforcement officer or other person, upon whom personal service of a subpoena has been made as set forth in subsection (h), constitutes good cause for a continuance."

SECTION 7. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The periods of administrative revocation with respect to a license and privilege to operate a vehicle, and motor vehicle registration if applicable, that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year revocation of license and privilege to operate a vehicle, if the respondent's record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) A minimum of one year up to a maximum of two years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (3) A minimum of two years up to a maximum of four years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows two prior alcohol enforcement contacts or drug enforcement contacts during the seven years preceding the date the notice of administrative revocation was issued;
- (4) Lifetime revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or
- (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61, revocation of license and privilege to operate a vehicle either for the period remaining until the respondent's eighteenth birthday or, if applicable, for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection (d), whichever is longer[.]; and such respondents shall not qualify for a conditional permit;

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later."

SECTION 8. Section 291E-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue a conditional license permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period; provided that one or more of the following conditions are met:

- (1) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
- (2) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41.

[The] Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to [a];

- (1) A respondent whose license, during the conditional license permit period, is expired or is suspended or revoked as a result of action other

- than the instant revocation for which the respondent is requesting a conditional license permit under this section[.]; or
- (2) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on October 1, 2002.

(Approved May 31, 2002.)

## ACT 114

S.B. NO. 2667

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 171-36.2, Hawaii Revised Statutes, is amended to read as follows:

**“[E]§171-36.2[.] Public lands for [urban] historic preservation and restoration.** (a) Any law to the contrary notwithstanding, the board may lease public lands in the State for use in [urban] historic preservation and restoration projects:

- (1) Through negotiations; and
- (2) For a price which shall be determined by the board.

(b) The department shall adopt rules pursuant to chapter 91 to determine what constitutes [urban] historic preservation and restoration projects for the purposes of this section; provided that no definition or criteria established shall conflict with any federal, state, or county law.

(c) All subleases of land disposed of pursuant to this section shall be subject to the approval of the board.”

SECTION 2. In amending title 13, subtitle 10, chapter 223, Hawaii administrative rules to conform with this Act, the department of land and natural resources shall be exempt from the public notice and hearing requirement of chapter 91, Hawaii Revised Statutes.

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)



A Bill for an Act Relating to School Facilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to provide less restrictive methods to achieve the original intent of Act 316, Session Laws of Hawaii 2001, as set forth in section 36-35(f), Hawaii Revised Statutes, which requires the comptroller to develop project specifications based on qualified products lists for school repair and maintenance projects.

Specifically, this Act will delete the requirement to develop and maintain a qualified product list by model or catalog number, and instead will allow project specifications to be written either as generic specifications or as prescriptive specifications without limiting the acceptable products. Generic specifications will accomplish the same results as a qualified product list, but will allow for more competition between suppliers and more flexibility for contractors.

The intent of this Act is not to diminish the requirements of the school repair and maintenance projects act, but to allow other, more cost-effective and efficient processes to achieve similar results.

SECTION 2. Section 36-35, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The comptroller shall ensure that all repair and maintenance projects achieve maximum cost-efficiency by emphasizing functional or performance criteria, uniformity of design, and commonality of products, and by avoiding unique or custom requirements that increase costs. The comptroller shall develop project specifications based on [qualified products lists and] generic specifications or prescriptive specifications using standard commercial products. Prescriptive specifications may include a qualified product list.

For the purposes of this subsection:

["Qualified products list" means an approved list of goods, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirement.]

“Generic specification” means a technical specification that is written in a clear, unambiguous, and nonrestrictive manner establishing:

- (1) Design, performance, or functional requirements to identify the work to be performed; and
- (2) Material standards to be used on a project.

“Prescriptive specification” means a technical specification:

- (1) Establishing that the required work to be performed is written in a clear, unambiguous, and nonrestrictive manner; and
- (2) Listing manufacturers or products that are acceptable for use on the project.

“Standard commercial product” means a product or material that in the normal course of business is customarily maintained in stock by, or readily available for marketing from a manufacturer, distributor, or dealer.

This subsection shall not apply to any school facility designated a historic property pursuant to section 6E-5.5.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

**ACT 116**

S.B. NO. 2682

A Bill for an Act Making Appropriations for Claims Against the State, its Officers, or its Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The following sums or so much thereof as may be necessary for fiscal year 2001-2002 are appropriated out of the general revenues of the State of Hawaii to the department of the attorney general for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

<b>JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:</b>	<b>AMOUNT</b>
<b>1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:</b>	
Certified Storage, Inc. dba West Waipahu Center v. State of Hawaii Civil No. 98-3953-09, First Circuit	\$ 900,000.00 Settlement
Cox, et al. v. Aloha Stadium Authority, et al., Civil No. 00-00118, USDC	\$ 51,000.00 Settlement
Lista v. State of Hawaii, et al. Civil No. 00-1-3082-10, First Circuit	\$ 22,042.18 Judgment
Amount of Judgment:	\$21,767.18
4% interest from 3/22/02:	\$ 275.00
<b>SUBTOTAL:</b>	<hr/> \$ 973,042.18
<b>2. DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, &amp; TOURISM:</b>	
National Lawyers Guild, et al. v. City and County of Honolulu Civil No. 01-00263 DAE-LEK, USDC	\$ 43,784.00 Settlement

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**
**AMOUNT**

Suntera v. Quinn, et al.	\$ 75,000.00
Civil No. 96-3580-08, First Circuit	Settlement
SUBTOTAL:	\$ 118,784.00
<b>3. DEPARTMENT OF EDUCATION:</b>	
Doe, et al. v. State of Hawaii, et al.	\$ 125,000.00
Civil No. 00-1-2430SSM, First Circuit	Settlement
Macy, et al. v. State of Hawaii, et al.	\$ 75,000.00
Civil No. 94-1026-03, First Circuit	Settlement
Manaole v. State of Hawaii, et al.	\$ 25,000.00
Civil No. 00-00393 SOM/LEK, USDC	Settlement
Shimizu v. State of Hawaii, et al.	\$ 30,000.00
Civil No. 99-3554-01, First Circuit	Settlement
Small v. State of Hawaii, et al.	\$ 45,000.00
Civil No. 99-4671-12(VLC), First Circuit	Settlement
Watanabe v. State of Hawaii, et al.	\$ 20,064.95
Civil No. 00-1-0003, Fifth Circuit	Judgment
Amount of judgment:	\$19,520.95
4% interest from 11/20/01:	\$ 544.00
SUBTOTAL:	\$ 320,064.95
<b>4. DEPARTMENT OF HEALTH:</b>	
Roes I, II and III v. State of Hawaii, et al., Civil Nos. 99-00079, 99-00308 and 99-00309, USDC	\$ 143,000.00
	Settlement
SUBTOTAL:	\$ 143,000.00
<b>5. DEPARTMENT OF HUMAN SERVICES:</b>	
Gelbish, et al. v. Reeber, et al.	\$ 50,000.00
Civil No. 97-0665-02, First Circuit	Settlement
Kihara, et al. v. Chandler	\$ 1,683,541.44
Civil No. 00-1-2847-09SSM, First Circuit	Settlement
SUBTOTAL:	\$ 1,733,541.44
<b>6. DEPARTMENT OF LAND AND NATU- RAL RESOURCES:</b>	
Bank of New York v. Converse, et al.	\$ 70,000.00
Civil No. 00-1-0607-02, First Circuit	Settlement
Kepa, et al. v. Okada Trucking Co., et al.	\$ 20,000.00
Civil No. 00-1-1437-05, First Circuit	Settlement
Ludlow v. County of Maui, et al.	\$ 65,361.50
Civil No. 99-0662-1, Second Circuit	Judgment
Amount of Judgment:	\$64,062.50
4% interest from 1/28/02:	\$ 1,299.00
Mitchell v. State of Hawaii, et al.	\$ 36,720.48
Civil No. 99-217K, Third Circuit	Judgment No interest

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**AMOUNT**

Kaahumanu, et al. v. State of Hawaii, et al., Civil No. 00-00758 DAE, USDC	\$ 30,239.52
Amount of settlement:	\$29,200.00
3.56% interest from 8/8/01:	\$ 1,039.52
O'Connor, et al. v. County of Maui, et al. Civil No. 94-0544, Second Circuit	\$ 75,000.00
Rode v. State of Hawaii, et al. Civil No. 00-1-0313(3), Second Circuit	\$ 28,948.00
Amount of Judgment:	\$27,776.00
4% interest from 7/12/01:	\$ 1,172.00
<b>SUBTOTAL:</b>	<b>\$ 326,269.50</b>
<b>7. DEPARTMENT OF PUBLIC SAFETY:</b>	
Akau v. State of Hawaii Civil No. 99-3238-08, First Circuit	\$ 15,000.00
Barona v. State of Hawaii Civil No. 01-1-0044-01, First Circuit	\$ 42,500.00
Gomes v. State of Hawaii, et al. Civil No. 00-1-1048-03, First Circuit	\$ 32,500.00
Kalamau v. State of Hawaii Civil No.00-1-0496, Third Circuit	\$ 27,436.00
Amount of Judgment:	\$26,000.00
4% interest from 3/1/02:	\$ 436.00
Costs:	\$ 1,000.00
Lawrence v. Akana, et al. Civil No. 01-00299SOM-LEK, USDC	\$ 10,000.00
Laybon, et al. v. Smythe, et al. Civil No. 96-0660 DAE/BMK, USDC	\$ 60,000.00
Miguel v. State of Hawaii Civil No. 99-0801-02, First Circuit	\$ 13,500.00
Naki v. State of Hawaii Civil No. 99-3344-09, First Circuit	\$ 75,000.00
Pahk v. State of Hawaii, et al. Civil No. 99-00849 SOM-LEK, USDC	\$ 40,000.00
Preston v. State of Hawaii Civil No. 99-2000-05, First Circuit	\$ 75,000.00
<b>SUBTOTAL:</b>	<b>\$ 390,936.00</b>
<b>8. OFFICE OF THE GOVERNOR:</b>	
Rice v. Cayetano Civil No. 96-00390 DAE, USDC	\$ 166,416.64
Amount of Judgment:	\$151,010.68
6.052% interest from 12/8/00:	\$ 15,405.96
<b>SUBTOTAL:</b>	<b>\$ 166,416.64</b>
<b>9. MISCELLANEOUS CLAIMS:</b>	
Stephanie A. Cadelinia	\$ 152.00
Meka Eastman	\$ 3,500.00

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**AMOUNT**

Sau Hing L. Goo	\$ 127.50
Amy E.T. Kobayashi	\$ 138.30
Demas Medeiros	\$ 166.00
Wilma Oskendahl	\$ 97.00
Debra Y.H. Pang	\$ 497.37
Rochelle Ugale Uganiza	\$ 332.00
SUBTOTAL:	\$ 5,010.17
TOTAL (SECTION 2):	\$ 4,177,064.88

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act; provided that of the general fund appropriation for Mitchell v. State of Hawaii, Civil No. 99-217K, Third Circuit, the sum of \$36,720.48 shall be deposited to the credit of the state harbors fund.

SECTION 3. The following sums, or so much thereof as may be necessary for fiscal year 2001-2002, are appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF TRANSPORTATION,  
HIGHWAYS DIVISION:**

Carvalho v. State of Hawaii Civil No. 00-1-0475, Third Circuit	\$ 75,000.00 Settlement
DeSilva v. State of Hawaii Civil No. 97-0303(3), Second Circuit	\$ 12,754.59 Judgment No interest
Higuchi v. State of Hawaii Civil No. 00-1-3644-11, First Circuit	\$ 35,000.00 Settlement
Hurr v. State of Hawaii Civil No. 01-1-1058-04, First Circuit	\$ 20,000.00 Settlement
Kramer v. Ellett, et al. Civil No. 97-256, Third Circuit	\$ 26,132.32 Judgment
Interest Included	
Le, et al. Yasuda, et al. Civil No. 00-1-2813-09, First Circuit	\$ 200,000.00 Settlement
Lopez-Quezada, et al. v. State of Hawaii Civil No. 96-0991(2), Second Circuit	\$ 35,000.00 Settlement
Rim v. State of Hawaii Civil No. 95-4350-11, First Circuit	\$ 125,000.00 Settlement
Ross v. State of Hawaii, et al. Civil No. 00-1-0087, Fifth Circuit	\$ 20,000.00 Settlement
Lauifi v. State of Hawaii Civil No. 00-01-0350(2), Second Circuit	\$ 65,000.00 Settlement

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

Struba v. Olayan, et al.	\$ 65,000.00
Civil No. 00-1-2062-06SSM, First Circuit	Settlement
TOTAL (SECTION 3):	\$ 678,886.91

The sums appropriated shall be expended by the department of transportation for purposes of this Act.

SECTION 4. The following sum, or so much thereof as may be necessary for fiscal year 2001-2002, are appropriated out of the state harbor fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF TRANSPORTATION,  
HARBORS DIVISION:**

Fernandez, et al. v. State of Hawaii	\$ 75,000.00
Civil No. 99-2522-07, First Circuit	Settlement
TOTAL (SECTION 4):	\$ 75,000.00

The sum appropriated shall be expended by the department of transportation for purposes of this Act.

SECTION 5. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of land and natural resources or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF LAND AND NATURAL  
RESOURCES:**

Kelly, et al. v. 1250 Oceanside Partners, et al., Civil No. 00-1-192K, Third Circuit	\$ 15,000.00
	Settlement
SUBTOTAL:	\$ 15,000.00
TOTAL (SECTION 5):	\$ 15,000.00

Provided that of the legislative appropriation for the department of land and natural resources for fiscal year 2002-2003 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, and as further amended by H.B. No. 1800 (the Supplemental Appropriations Act of 2002), the general fund sum of \$7,500.00 from the Historic Preservation Program (LNR 802), and the special fund sum of \$7,500.00 from the Na Ala Hele program special fund (LNR 804), shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 6. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of accounting and general services or its

officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF ACCOUNTING AND  
GENERAL SERVICES:**

Kobayashi, et al. v. State of Hawaii, et al. Civil No. 00-1-2816-09, First Circuit	\$ 8,000.00 Settlement
SUBTOTAL:	\$ 8,000.00
TOTAL (SECTION 6):	\$ 8,000.00

Provided that of the legislative appropriation for the department of accounting and general services for fiscal year 2001-2002 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, and as further amended by H.B. No. 1800 (the Supplemental Appropriations Act of 2002), the general fund sum of \$8,000.00 shall be expended from the Construction Program (AGS 221) by the department of accounting and general services for the purposes of this Act.

SECTION 7. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of education or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF EDUCATION:**

Kobayashi, et al. v. State of Hawaii, et al. Civil No. 00-1-2816-09, First Circuit	\$ 8,000.00 Settlement
SUBTOTAL:	\$ 8,000.00
TOTAL (SECTION 7):	\$ 8,000.00

Provided that of the legislative appropriation for the department of education for fiscal year 2001-2002 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, and as further amended by H.B. No. 1800 (the Supplemental Appropriations Act of 2002), the general fund sum of \$8,000.00 shall be expended from the School Based Budgeting Program (EDN 100) by the department of education for the purposes of this Act.

SECTION 8. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of public safety or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF PUBLIC SAFETY:**

Hernandez v. State of Hawaii, et al.	\$ 17,500.00
Civil No. 01-1-1733-06(SSM), First Circuit	Settlement

SUBTOTAL:	<u>\$ 17,500.00</u>
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TOTAL (SECTION 8):	\$ 17,500.00
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Provided that of the legislative appropriation for the department of public safety for fiscal year 2001-2002 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, and as further amended by H.B. No. 1800 (the Supplemental Appropriations Act of 2002), the general fund sum of \$17,500.00 shall be expended from the Health Care Division Program (PSD 421) by the department of public safety for the purposes of this Act.

SECTION 9. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of land and natural resources or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF LAND AND NATURAL  
RESOURCES:**

Hawaii Electric Light Company, Inc. v.	\$ 17,622.07
Department of Land and Natural Resources,	Judgment
et al., Civil No. 96-131K, Third Circuit	No Interest

SUBTOTAL:	<u>\$ 17,622.07</u>
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TOTAL (SECTION 9):	\$ 17,622.07
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Provided that of the legislative appropriation for the department of land and natural resources for fiscal year 2001-2002 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, and as further amended by H.B. No. 1800 (the Supplemental Appropriations Act of 2002), the special fund sum of \$17,622.07 shall be expended from the Special Land and Development Fund special fund in LNR 101, by the department of land and natural resources for the purposes of this Act.

SECTION 10. The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks issued by the comptroller; provided departments must obtain the approval of the attorney general before payment of any claim can be made.

SECTION 11. Notwithstanding the sums hereinabove stated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this part, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which their statute applies.



PART II

SECTION 12. The legislature finds and declares that the following claims for legislative relief recommended for approval as to the following named person for claims against the State or the University of Hawaii or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE UNIVERSITY OF HAWAII  
AND SETTLEMENTS OF CLAIMS:**

Hoshijo, et al. v. State of Hawaii, et al. FEP No. 8743; EEOC 37B-98-0075	\$ 25,000.00 Settlement
Silva v. University of Hawaii, et al. Civil No. 99-00636, SPK/BMK, USDC	\$ 138,162.50 Settlement
SUBTOTAL:	<u>\$ 163,162.50</u>
TOTAL (SECTION 12):	\$ 163,162.50

Provided that of the legislative appropriation for the University of Hawaii for fiscal year 2002-2003 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, and as further amended by H.B. No. 1800 (the Supplemental Appropriations Act of 2002), the following special fund sum of \$163,162.50 shall be expended from the University of Hawaii tuition and fees special fund by the University of Hawaii for purposes of this Act.

SECTION 13. Notwithstanding the sums hereinabove, if any, stated as interest upon judgments against the University of Hawaii, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this part, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which that statute applies.

PART III

SECTION 14. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2003, shall lapse.

SECTION 15. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not effect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 16. This Act shall take effect upon its approval; provided that part II of this Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

## ACT 117

S.B. NO. 2750

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 213 of the Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (i) to read as follows:

“(i) Native Hawaiian rehabilitation fund. Pursuant to Article XII, Section 1, of the State Constitution, thirty percent of the state receipts, derived from lands previously cultivated as sugarcane lands under any other provision of law and from water licenses, shall be deposited into this fund. The department shall use this money [solely] for the rehabilitation of native Hawaiians, native Hawaiian families, and Hawaiian homestead communities, which shall include ~~[but not be limited to]~~ the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.

The native Hawaiian rehabilitation fund shall be subject to the following conditions:

- (1) All moneys received by the fund shall be deposited into the state treasury and kept separate and apart from all other moneys in the state treasury;
- (2) The director of finance shall serve as a custodian of the fund. All payments from the fund shall be made by the director of finance only upon vouchers approved by the commission;
- (3) The commission shall develop guidelines for the investment of moneys in the fund;
- (4) The commission may invest and reinvest in investments authorized by<sup>1</sup> chapter 88[-], Hawaii Revised Statutes. The commission may hold, purchase, sell, assign, transfer, or dispose of any securities and investments in which any of the moneys shall have been invested, as well as the proceeds of such investments; and
- (5) The commission may pay out of any of the moneys held for investment, a reasonable amount to any person for supplying investment advisory or consultive services; and to meet such other costs incident to the prudent investment of moneys as the commission may approve.

Any payment of principal, interest, or other earnings arising out of the loan or investment of money from this fund shall be credited to and deposited into this fund.

Sections 214, 215, 216, and 217 shall not apply to administration of this fund. The department is authorized to adopt rules under chapter 91, Hawaii Revised Statutes, necessary to administer and carry out the purposes of this fund.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

**Note**

1. Prior to amendment “in” appeared here. “By” should be underscored.

A Bill for an Act Relating to Hospital Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**“§321- Hospitals; licensing.** (a) All hospitals shall be licensed by the department to ensure the health, safety, and welfare of the individuals placed therein.

(b) The director shall adopt rules in accordance with chapter 91 that shall provide for the licensing of hospitals.

(c) The rules may provide that accreditation by the joint commission on accreditation of healthcare organizations demonstrates a hospital’s compliance with all licensing inspections required by rules for the year in which the joint commission on accreditation of healthcare organizations accreditation is issued. The rules may exempt a hospital from a licensing inspection for the year in which a joint commission on accreditation of healthcare organizations accreditation is issued under the following conditions:

(1) The hospital provides a certified copy of the hospital’s official joint commission on accreditation of healthcare organizations accreditation report to the department;

(2) The hospital holds full accreditation by the joint commission on accreditation of healthcare organizations; and

(3) The hospital holds a current and valid license.

(d) The rules shall provide that the department may conduct inspections and investigations of exempt hospitals to investigate complaints, follow up on adverse accreditation findings, or conduct periodic validation surveys.

(e) Information contained in reports of survey and official accreditation letters made by the joint commission on accreditation of healthcare organizations used in determining compliance with licensing requirements shall be public information.

(f) All other records maintained by the department shall be governed by chapter 92F.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Repeal of Null and Void and Unnecessary Administrative Rules.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to reduce the number of administrative rules by repealing one or more specific sections, chapters, or subchapters of the

Hawaii administrative rules. This Act further specifies that to expedite the streamlining of Hawaii state government and to increase government efficiency, agencies whose rules are repealed by this Act need not comply with the requirements for the repeal of rules under the Administrative Procedure Act with respect to these rules.

SECTION 2. Notwithstanding any law to the contrary, the following administrative rules of the Hawaii administrative rules are hereby repealed because they are already null and void:

- (1) DEPARTMENT OF LAND AND NATURAL RESOURCES:
  - (A) Title 13, chapter 175, Rules Governing Irrigation Water Service to Consumers of the Molokai Irrigation System;
  - (B) Title 13, chapter 176, Rules Governing Irrigation Water Services to Consumers of the Waimea Irrigation System; and
  - (C) Title 13, chapter 177, Rules Governing Irrigation Water Service to Consumers of the Waimanalo Irrigation System; and
- (2) DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS:
  - (A) Title 16, chapter 62, Hawaii Public Broadcasting Authority, Fund Raising; and
  - (B) Title 16, chapter 63, Hawaii Public Broadcasting Authority, Services and Charges.

SECTION 3. Notwithstanding any law to the contrary, the following Hawaii administrative rules are hereby repealed, having been found to be unnecessary.

DEPARTMENT OF EDUCATION:

- (1) Title 8, chapter 14, Exclusion of Students Having Communicable Disease;
- (2) Title 8, chapter 15, Parent-Teacher Conferences;
- (3) Title 8, chapter 16, Release of Students for Religious Holy Days;
- (4) Title 8, chapter 17, Married Students;
- (5) Title 8, chapter 18, Pregnant Students;
- (6) Title 8, chapter 20, Student Examinations;
- (7) Title 8, chapter 21, Reporting Pupil Progress;
- (8) Title 8, chapter 22, Test Information to Parents;
- (9) Title 8, chapter 23, Homework;
- (10) Title 8, chapter 24, Student Promotion;
- (11) Title 8, chapter 26, High School Graduation Through the Adult Schools;
- (12) Title 8, chapter 29, Student Travel;
- (13) Title 8, chapter 35, Soliciting Information from Students;
- (14) Title 8, chapter 42, School Services;
- (15) Title 8, chapter 43, Junior Police Organization;
- (16) Title 8, chapter 44, Student Accident Insurance;
- (17) Title 8, chapter 47, Solicitation by Non-Departmental Personnel; and
- (18) Title 8, chapter 48, Solicitation by the School.

SECTION 4. All contracts entered into pursuant to administrative rules that have been repealed by this Act shall continue to be honored until their termination. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act or to otherwise violate either the Hawaii State Constitution or Article I, Section 10, of the United States Constitution.

SECTION 5. Notwithstanding section 91-3, Hawaii Revised Statutes, or any other law to the contrary, no agency affected by any section, chapter, or subchapter of the Hawaii administrative rules that has been repealed by this Act shall be

required to give advanced public notice, provide a public hearing, distribute copies of repealed rules, or take any other action required by chapter 91, Hawaii Revised Statutes, with respect to those administrative rules that have been repealed by this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

ACT 120

S.B. NO. 2934

A Bill for an Act Relating to Intoxicating Liquor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that residential communities should have the right to influence decisions regarding liquor-serving establishments operating in their neighborhoods. So often a single entrepreneur's right to operate a business interferes with the rights of thousands to the "quiet enjoyment" of their homes. In addition, the deterioration of long-established residential neighborhoods due to businesses that attract property crime, disruptive behavior, vice, graffiti, and other demoralizing and economically destructive influences is prevalent in every city. Honolulu is particularly affected by this trend.

The purpose of this Act is to strengthen the rights of the community regarding the licensing of liquor establishments.

SECTION 2. Section 281-41, Hawaii Revised Statutes, is amended to read as follows:

**"§281-41 Transfer of licenses; notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members of a limited liability company license; penalty. (a)** No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of [such] the issuance or transfer, except for good cause shown to the satisfaction of the liquor commission. No license issued under this chapter shall be transferable or be transferred except upon written application to the commission by the proposed transferee, and after prior inspection of the premises, reference to, and report by an inspector, and a public hearing held by the commission not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situated within the vicinity of the premises and without the right to [such] the owners or lessees to protest the transfer of a license. Exceptions are class 5 and 11 licensees who must comply with the notice requirements as set forth in section 281-57.

(b) No class 5 or 12 license issued to a standard bar, as defined in section 281-1, shall be transferable to other than a standard bar[;] and that such license shall be subject to revocation if the licensed premises is not retained as a standard bar except upon written application to the commission by the licensee [and/or] or the proposed transferee, subject to sections 281-51 to 281-60.

(c) A county may increase the requirements for transfers of class 5, category (2) and (4), and class 11 licenses by ordinance designating one or more areas within the county as special liquor districts and specifying the requirements applicable to transfers of any of these licenses within each district.

(d) For the purpose of this section, “special liquor district” means an area designated by a county for restoration, reservation, historic preservation, redevelopment, ~~[or]~~ rejuvenation, or residential protection, in which development is guided to protect or enhance the physical and visual aspects of the area for the benefit of the community as a whole.

(e) Where a license is held by a partnership, the commission may, notwithstanding this section, transfer the license upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice and without public hearing.

(f) Where a license is held by a limited partnership or a limited liability company, the admission or withdrawal of a limited partner or a member of the limited liability company shall not be deemed a transfer of the license held by the partnership or limited liability company, but the licensee shall, prior to such admission or withdrawal, so notify the commission in writing, stating the name of the partner, partners, member, or members who have withdrawn, if such be the case, and the name, age, and place of residence of the partner, partners, member, or members who have been admitted, if that be the case. If the commission finds a limited partner or a member to be an unfit or improper person to hold a license in the limited partner’s or member’s own right pursuant to section 281-45, it may revoke the license or suspend the license of the partnership or the limited liability company until the unfit or improper partner or member is removed or replaced.

(g) Except as otherwise provided in this section, the same procedure shall be followed in regard to the transfer of a license as is prescribed by this chapter for obtaining a license. Sections 281-51 to 281-60, except where inconsistent with any provision hereof, are hereby made applicable to such transfers. The word “applicant”, as used in such sections, shall include each such proposed transferee, and the words, “application for a license or for the renewal of a license”, as used in such sections, shall include an application for the transfer of a license.

(h) Upon the hearing, the commission shall consider the application and any objections to the granting thereof[;] and hear the parties in interest. It shall inquire into the propriety of each transfer and determine whether the proposed transferee is a fit person to hold the license. It may approve a transfer or refuse to approve a transfer[;] and the refusal by the commission to approve a transfer shall be final and conclusive, unless an appeal is taken as provided in chapter 91.

(i) If any licensee without such approval transfers to any other person the licensee’s business for which the licensee’s license was issued, either openly or under any undisclosed arrangement, whereby any person, other than the licensee, comes into possession or control of the business[;] or takes in any partner or associate, the commission may in its discretion suspend or cancel the license.

(j) If the licensee is a corporation, a change in ownership of any outstanding capital stock shall not be deemed a transfer of a license; provided that in the case of a change in ownership of twenty-five per cent or more of the stock or in the case of change in ownership of any number of shares of the stock ~~[which]~~ that results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding capital stock, the corporate licensee shall, prior to the date of ~~[such]~~ the transfer, apply for and secure the approval of the transfer from the commission in writing. If the commission finds that the proposed transferee is an unfit or improper person to hold a license in the proposed transferee’s own right pursuant to section 281-45, it shall not approve the proposed transfer. If any transfer is made without the prior approval of the commission, the commission may in its discretion revoke or suspend the license until it determines that the transferee is a fit and proper person, and if the commission finds that the transferee is not a fit and proper person, until a retransfer or new transfer of the capital stock is made to a fit and proper person pursuant to section 281-45. In addition, the corporate licensee shall, within thirty

days from the date of election of any officer or director, notify the commission in writing of the name, age, and place of residence of [such] the officer or director. If the commission finds the transferee, officer, or director an unfit or improper person to hold a license in the transferee's, officer's, or director's own right pursuant to section 281-45, it may in its discretion revoke the license or suspend the license until a retransfer or new transfer of [such] the capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper transferee, officer, or director is removed or replaced by a fit and proper person pursuant to section 281-45.

(k) If a licensee closes out the business for which the license is held, during the term for which the license was issued, the licensee shall, within five days from the date of closing the same, give the commission written notice thereof and surrender the licensee's license for cancellation."

SECTION 3. Section 281-56, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) On every application referred to the investigator under section 281-55, the investigator shall report in writing to the liquor commission and, if the application is for a license of any class other than class 7, class 8, or class 9, such report shall show:

- (1) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions including the relationship to surrounding residences which may share a common boundary or a common structure with the premises proposed for licensing;
- (2) If the application is made by a person who has held a prior license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license;
- (3) The locality of any church, chapel, or school, if any, within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of the church, chapel, or school grounds;
- (4) The number, position, and distance from the premises, in respect of which a license is applied for, of any other licensed premises of the same class in the neighborhood;
- (5) The number of licenses of the same class or kind already issued and being lawfully exercised within the county;
- (6) Whether or not in the opinion of the investigator the applicant is a fit and proper person to have a license;
- (7) Whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the applicant has complied with all the requirements of this chapter relative to the making and filing of the applicant's application;
- (8) For the next application for a license that was previously denied, refused, or withdrawn, evidence, to be provided by the applicant, of a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal; and
- (9) Any and all other matters and things, which in the judgment of the investigator pertain to or affect the matter of the application, or the issuance or the exercise of the license applied for[-]; provided that when the license application is for premises within a county encompassing a population of 500,000 residents or more, the report shall specify the

possible adverse effects the premises, after licensing, may have on the surrounding community.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 121

H.B. NO. 1731

A Bill for an Act Relating to Drivers Education Fund Underwriters Fees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the department of transportation has canceled its agreement with the University of Hawaii community colleges to coordinate motorcycle and motor scooter education classes, and has taken over responsibility for administering the rider education program.

Since the university is no longer administering the state motorcycle program, the purpose of this Act is to transfer funding of the program to the department of transportation.

SECTION 2. Section 431:10G-107, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10G-107 Drivers education fund underwriters fee~~[-]~~; motorcycle and motor scooter operators education fund.** (a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers education fund underwriters fee of \$2 a year on each motorcycle or motor scooter insured by each insurer or self-insurer. This fee shall be due and payable ~~[in-full]~~ on an annual basis by means and at a time to be determined by the commissioner.

(b) ~~There is created in the treasury of the State a special fund to be known as the motorcycle and motor scooter operators education fund.~~ The commissioner shall deposit ~~[these]~~ the fees collected under this section into ~~[a special drivers education fund account.]~~ the motorcycle and motor scooter operators education fund.

(c) The fees deposited for each fiscal year ~~into the motorcycle and motor scooter operators education fund,~~ when appropriated, shall be ~~[distributed to and expended by the University of Hawaii community colleges]~~ available to the department of transportation for the ~~[operation]~~ administration of a drivers education program for operators of motorcycles or motor scooters. The department of transportation may spend the amount collected from these fees for the purposes of this section.”

SECTION 4.<sup>1</sup> Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5.<sup>1</sup> This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)



Note

1. So in original.

ACT 122

H.B. NO. 1740

A Bill for an Act Relating to Enterprise Zones.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The state enterprise zone law offers state, county, and other incentives to certain types of businesses that increase their hiring in the zones selected by the counties and approved by the governor. Enterprise zones are intended to stimulate business and industrial growth in low-income or high unemployment areas to help revitalize those areas.

The purpose of this Act is to expand coverage of the enterprise zone law by including disease management services as a client within the definition of "call center" under section 209E-2, Hawaii Revised Statutes.

SECTION 2. Section 209E-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"Disease management services" means patient self-management education services, which may include primary prevention, behavioral modification, compliance/surveillance, and routine reporting and feedback including communication with patients, physicians, health plans, or ancillary providers."

2. By amending the definition of "call center" to read:

"Call center" means a business providing service at an establishment in which customer and technical support service for manufacturing companies, disease management services, computer hardware and software companies, credit collection services, product fulfillment services, or disaster management services, are provided by telephone; provided that the business shall not include telemarketing or sales."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

ACT 123

H.B. NO. 1758

A Bill for an Act Relating to Domestic Abuse.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 586-6, Hawaii Revised Statutes, is amended to read as follows:

**"§586-6 Notice of order.** (a) Any order issued under this chapter shall either be personally served upon the respondent, or served by certified mail, unless the respondent was present at the hearing in which case the respondent shall be deemed to have notice of the order. A filed copy of each order issued under this chapter shall be served by regular mail upon the chief of police of each county.

(b) Except as otherwise provided in this chapter or in the order, a law enforcement officer as defined in section 701-118 may use a reliable copy, facsimile telecommunication, or other reliable reproduction of an order issued pursuant to this chapter in lieu of the original order for purposes of this section. Any such copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original order and may only be transmitted from law enforcement officer to law enforcement officer until served."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved May 31, 2002.)

## ACT 124

H.B. NO. 2120

A Bill for an Act Relating to the Uniform Child-Custody Jurisdiction and Enforcement Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This measure enacts the Uniform Child Custody Jurisdiction and Enforcement Act of 1997 (UCCJEA) to replace the Uniform Child Custody Jurisdiction Act of 1968. The UCCJEA eliminates the differences between the 1968 law and the federal Parental Kidnapping Prevention Act, enhances home state custody continuing exclusive jurisdiction, authorizes enforcement proceedings in a state other than the state issuing the custody order, authorizes prosecutors to locate the child and enforce custody orders, and provides uniformity among the states which is necessary with a mobile population.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### **"CHAPTER UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT**

#### **PART I. GENERAL PROVISIONS**

§ **-101 Short title.** This chapter may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

§ **-102 Definitions.** In this chapter:  
"Abandoned" means left without provision for reasonable and necessary care or supervision.

"Child" means an individual who has not attained eighteen years of age.

"Child-custody determination" means a judgment, decree, or other order of a court providing for legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

"Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, pater-

nity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under part III.

“Commencement” means the filing of the first pleading in a child-custody proceeding.

“Court” means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

“Home state” means the state in which a child lived with a parent or a person acting as a parent for a period of at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

“Initial determination” means the first child-custody determination concerning a particular child.

“Issuing court” means the court that makes a child-custody determination for which enforcement is sought under this chapter.

“Issuing state” means the state in which a child-custody determination is made.

“Modification” means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

“Person acting as a parent” means a person, other than a parent, who:

- (1) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and
- (2) Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

“Physical custody” means the physical care and supervision of a child.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Sibling” refers to full-blood brothers and sisters, and step and half blood siblings.

“Tribe” means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

“Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

**§ -103 Proceedings governed by other law.** This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

**§ -104 Application to Indian tribes.** (a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 United States Code section 1901 et seq., shall not be subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying parts I and II.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under part III.

§ **-105 International application of chapter.** (a) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying parts I and II.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under part III.

(c) A court of this State need not apply this chapter if the child-custody law of a foreign country violates fundamental principles of human rights.

§ **-106 Effect of child-custody determination.** A child-custody determination made by a court of this State that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this State or notified in accordance with section -108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

§ **-107 Priority.** If a question of existence or exercise of jurisdiction under this chapter is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

§ **-108 Notice to persons outside State.** (a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

§ **-109 Appearance and limited immunity.** (a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this State.

§ **-110 Communication between courts.** (a) A court of this State may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is:

- (1) Inscribed on a tangible medium; or
- (2) Stored in an electronic or other medium;

and is retrievable in perceivable form. It includes a written summary prepared and approved by the presiding judge and entered into the court record.

**§ -111 Taking testimony in another state.** (a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the means of transmission.

**§ -112 Cooperation between courts; preservation of records.** (a) A court of this State may request the appropriate court of another state to:

- (1) Hold an evidentiary hearing;
- (2) Order a person to produce or give evidence pursuant to procedures of that state;
- (3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains eighteen years of age. Upon appropriate request by

a court or law enforcement official of another state, the court shall forward a certified copy of those records.

## PART II. JURISDICTION

**§ -201 Initial child-custody jurisdiction.** (a) Except as otherwise provided in section -204, a court of this State has jurisdiction to make an initial child-custody determination only if:

- (1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;
  - (2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under section -207 or -208, and:
    - (A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and
    - (B) Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;
  - (3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under section -207 or -208; or
  - (4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).
- (b) Subsection (a) shall be the exclusive jurisdictional basis for making a child-custody determination by a court of this State.
- (c) Physical presence of, or personal jurisdiction over, a party or a child shall not be necessary or sufficient to make a child-custody determination.

**§ -202 Exclusive, continuing jurisdiction.** (a) Except as otherwise provided in section -204, a court of this State which has made a child-custody determination consistent with section -201 or -203 has exclusive, continuing jurisdiction over the determination until:

- (1) A court of this State determines that the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or
  - (2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.
- (b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section -201.

**§ -203 Jurisdiction to modify determination.** Except as otherwise provided in section -204, a court of this State shall not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under section -201(a)(1) or (2) and:

- (1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section -202 or that a court of this State would be a more convenient forum under section -207; or
- (2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

**§ -204 Temporary emergency jurisdiction.** (a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this chapter and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under sections -201 to -203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections -201 to -203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections -201 to -203, a child-custody determination made under this section becomes a final determination, if it so provides, and this State becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this chapter, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under sections -201 to -203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections -201 to -203. The order issued in this State shall remain in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under sections -201 to -203, shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to sections -201 to -203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

**§ -205 Notice; opportunity to be heard; joinder.** (a) Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section -108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this chapter are governed by the law of this State as in child-custody proceedings between residents of this State.

**§ -206 Simultaneous proceedings.** (a) Except as otherwise provided in section -204, a court of this State shall not exercise its jurisdiction under this part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under section -207.

(b) Except as otherwise provided in section -204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section -209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

- (1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
- (2) Enjoin the parties from continuing with the proceeding for enforcement; or
- (3) Proceed with the modification under conditions it considers appropriate.

**§ -207 Inconvenient forum.** (a) A court of this State which has jurisdiction under this chapter to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) The length of time the child has resided outside this State;
- (3) The distance between the court in this State and the court in the state that would assume jurisdiction;
- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;
- (6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation; and
- (9) The physical and psychological health of the parties.



(c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for divorce or another proceeding, while still retaining jurisdiction over the divorce or other proceeding.

**§ -208 Jurisdiction declined by reason of conduct.** (a) Except as otherwise provided in section -204, if a court of this State has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

- (1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
- (2) A court of the state otherwise having jurisdiction under sections -201 to -203 determines that this State is a more appropriate forum under section -207; or
- (3) No court of any other state would have jurisdiction under the criteria specified in sections -201 to -203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under sections -201 to -203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it may assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought is a protective parent fleeing abuse, or the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this chapter.

**§ -209 Information to be submitted to court.** (a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

- (1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;
- (2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and
- (3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) to (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party shall have a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) Upon a finding, which may be ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the court shall order that the address of the child or party or other identifying information shall not be disclosed in a pleading or other documents filed in a proceeding under this section.

**§ -210 Appearance of parties and child.** (a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to section -108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

### PART III. ENFORCEMENT

**§ -301 Definitions.** In this part:

“Petitioner” means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction, or enforcement of a child-custody determination.

“Respondent” means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction, or enforcement of a child-custody determination.

**§ -302 Enforcement under Hague Convention.** Under this part a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

**§ -303 Duty to enforce.** (a) A court of this State shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of

this chapter and the determination has not been modified in accordance with this chapter.

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another state. The remedies provided in this part are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

**§ -304 Temporary visitation.** (a) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

- (1) A visitation schedule made by a court of another state; or
- (2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in part II. The order remains in effect until an order is obtained from the other court or the period expires.

**§ -305 Registration of child-custody determination.** (a) A child-custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

- (1) A letter or other document requesting registration;
- (2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
- (3) Except as otherwise provided in section -209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

**§ -306 Enforcement of registered determination.** (a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another state.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with part II, a registered child-custody determination of a court of another state.

**§ -307 Simultaneous proceedings.** If a proceeding for enforcement under this part is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under part II, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

**§ -308 Expedited enforcement of child-custody determination.** (a) A petition under this part shall be verified. Certified copies of all orders sought to be

enforced and of any order confirming registration shall be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

- (1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
- (2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;
- (3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;
- (4) The present physical address of the child and the respondent, if known;
- (5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officers and, if so, the relief sought; and
- (6) If the child-custody determination has been registered and confirmed under section -305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing shall be held on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under section -312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

- (1) The child-custody determination has not been registered and confirmed under section -305, and that:
  - (A) The issuing court did not have jurisdiction under part II;
  - (B) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under part II;
  - (C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section -108, in the proceedings before the court that issued the order for which enforcement is sought; or
- (2) The child-custody determination for which enforcement is sought was registered and confirmed under section -305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under part II.

§ **-309 Service of petition and order.** Except as otherwise provided in section -311, the petition and order must be served, by any method authorized by the law of this State, upon respondent and any person who has physical custody of the child.

§ **-310 Hearing and order.** (a) Unless the court issues a temporary emergency order pursuant to section -204, upon a finding that a petitioner is

entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

- (1) The issuing court did not have jurisdiction under part II;
  - (2) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under part II; or
  - (3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section -108, in the proceedings before the court that issued the order for which enforcement is sought.
- (b) The court may award the fees, costs, and expenses authorized under section -312 and may grant additional relief, including a request for the assistance of law enforcement officers, and set a further hearing to determine whether additional relief is appropriate.
- (c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.
- (d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this part.

**§ -311 Warrant to take physical custody of child.** (a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition shall be heard on the first judicial day possible. The application for the warrant must include the statements required by section -308(b).

(c) A warrant to take physical custody of a child must:

- (1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
- (2) Direct law enforcement officers to take physical custody of the child immediately; and
- (3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

**§ -312 Costs, fees, and expenses.** (a) The court may award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

§ **-313 Recognition and enforcement.** A court of this State shall accord full faith and credit to an order issued by another state and consistent with this chapter, which enforces a child-custody determination by a court of another state, unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under part II.

§ **-314 Appeals.** An appeal may be taken from a final order in a proceeding under this part in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section -204, the enforcing court shall not stay an order enforcing a child-custody determination pending appeal.

§ **-315 Role of attorney general and of prosecuting attorneys.** (a) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the attorney general or the county prosecuting attorney, as appropriate, may take any lawful action, including resort to a proceeding under this part or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

- (1) An existing child-custody determination;
- (2) A request to do so from a court in a pending child-custody proceeding;
- (3) A reasonable belief that a criminal statute has been violated; or
- (4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) The attorney general or county prosecuting attorney, as appropriate, acting under this section acts on behalf of the court and shall not represent any party.

§ **-316 Role of law enforcement.** At the request of the attorney general or county prosecuting attorney, as appropriate, acting under section -315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the attorney general or county prosecuting attorney with responsibilities under section -315.

§ **-317 Costs and expenses.** If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the attorney general or county prosecuting attorney, as appropriate, and law enforcement officers under section -315 or -316."

SECTION 3. Section 571-46.1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Any order for the custody of the minor child or children of a marriage entered by a court in this State or any other state may, subject to the jurisdictional requirements set forth in ~~[section 583-3,]~~ sections -201 to -204, be modified at any time to an order of joint custody in accordance with ~~[the provisions of]~~ this section."

SECTION 4. Chapter 583, Hawaii Revised Statutes, is repealed.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act. A motion or other request for relief made in a child-custody

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determination which was commenced before the effective date of this chapter shall be governed by the law in effect at the time the motion or other request was made.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 2003.

(Approved May 31, 2002.)

## ACT 125

H.B. NO. 2553

A Bill for an Act Relating to the Bureau of Conveyances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 501-23.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~[1]~~§501-23.5 Disposition of fees received at the bureau of conveyances.~~[1]~~ Notwithstanding any other law to the contrary, of the fees received at the bureau of conveyances, the registrar of conveyances shall deposit to the credit of the state general fund [~~\$23~~] \$18 for each document recorded and shall deposit the remaining balance and all fees other than the special mortgage recording fee established pursuant to section 431P-16 and conveyance tax collected pursuant to section 247-1 to the credit of the bureau of conveyances special fund established under section 502-8.”**

SECTION 2. Section 502-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

**“(b) Notwithstanding any other law to the contrary, of the fees received at the bureau of conveyances, the registrar of conveyances shall deposit to the credit of the state general fund [~~\$23~~] \$18 for each document recorded and shall deposit the remaining balance and all fees other than the special mortgage recording fee established pursuant to section 431P-16 and conveyance tax collected pursuant to section 247-1 to the credit of the bureau of conveyances special fund established under section 502-8.”**

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

## ACT 126

S.B. NO. 2290

A Bill for an Act Relating to Independent Bill Reviewers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:9-243, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§431:9-243]]~~ Qualification for independent bill reviewer’s license.** To qualify for an independent bill reviewer’s license, an applicant shall comply with this article and shall:

- (1) Be domiciled in this State, or in a state that will permit residents of this State to act as independent bill reviewers in such other state;
- (2) Have experience, special education, or training with reference to the review or audit of billings for medical services under insurance contracts, of sufficient duration and extent to reasonably make the individual competent to fulfill the responsibilities of an independent bill reviewer;
- (3) Have successfully passed any examination required under section 431:9-206; and
- (4) Pay the license fee;

~~provided that [in the alternative to paragraphs (1) to (3), the applicant shall hold the credential of a certified professional coder granted by the American Academy of Professional Coders.]~~ any applicant who holds the credential of certified professional coder granted by the American Academy of Professional Coders or the credential of registered health information administrator, registered health information technician, certified coding specialist, or certified coding associate granted by the American Health Information Management Association shall be exempt from the requirements in paragraphs (1) to (3).”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 127

S.B. NO. 2613

A Bill for an Act Relating to Fishing Rights and Regulations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that feeding sharks and other marine life has become an increasingly popular activity as a tourist attraction in some areas. Attacks on people involved in feeding operations have been documented, and untrained sharks may pose a generally increased risk of attacks on individuals not involved in feeding operations. In response to these safety concerns, Florida recently banned feeding of sharks and other marine life.

The legislature further finds that the Hawaii board of land and natural resources has approved a series of public hearings later in the year on proposed administrative rules banning shark feeding in state waters.



The purpose of this Act is to add a new section in the Hawaii Revised Statutes that would ban shark feeding for commercial purposes.

SECTION 2. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§188- Shark feeding; prohibitions; exceptions; penalties.** (a) Except as provided in subsection (b), or as otherwise provided by law, it shall be unlawful for any person to conduct any activity related to the feeding of sharks in state marine waters.

(b) Persons may engage in the feeding of sharks for traditional Hawaiian cultural or religious practices; provided that the feeding is not part of a commercial activity.

(c) Persons engaged in the taking of marine life that results in captured, injured, or dead fish being incidentally eaten by sharks shall not be considered in violation of this section; provided that the purpose of the taking of marine life is not the feeding of sharks.

(d) The department may issue permits to engage in activities otherwise prohibited by law, in accordance with section 187A-6, or as may be otherwise authorized by law.

(e) As used in this section:

“Commercial activity” means to engage in any action or to attempt to engage in any action for compensation in any form. The action or actions may include, but are not limited to, providing, or attempting to provide, guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.

“Compensation” means money, barter, trade, credit, and other instruments of value, goods, and other forms of payment.

“Feeding” means the introduction of or an attempt to introduce any food or other substance into the water to attract marine life for any purpose other than to take the marine life.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 128**

S.B. NO. 2715

A Bill for an Act Relating to the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 88-3, Hawaii Revised Statutes, is amended to read as follows:

**“§88-3 Payment on death of pensioner.** Whenever any person receiving a pension from the State or from any county thereof dies, the amount next payable shall be prorated from the last payment date up to and including the date of death[.], and effective January 1, 2003, whenever a person receiving a pension from the state

retirement system dies, the full monthly pension shall be payable for the month in which the pensioner is deceased. The sum [so prorated] shall be paid to such person as may have been designated by the pensioner during the pensioner's lifetime in a statement filed with the officer charged with payment of the pension, or, if no such designation has been made and filed, then the amount so due shall be paid to the personal representative of the estate of the pensioner."

SECTION 2. Section 88-6, Hawaii Revised Statutes, is amended to read as follows:

**"§88-6 Payment of retirement benefits.** Notwithstanding any other provision of this chapter:

- (1) All retirees and beneficiaries of the state retirement system or county pension funds shall be paid semimonthly; and effective January 1, 2003, all retirees and beneficiaries of the state retirement system who either retire or become beneficiaries after January 1, 2003, shall be paid monthly; and
- (2) Any retiree or beneficiary whose benefit commences after June 30, 2001, shall designate a financial institution account into which the system shall be authorized to deposit their [semimonthly] retirement benefit. This method of payment may be waived by the system if another method is determined to be more appropriate."

SECTION 3. Section 88-23, Hawaii Revised Statutes, is amended to read as follows:

**"§88-23 General administration of system vested in board.** The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this part and part VII of this chapter are vested in a board of trustees; subject, however, to the area of administrative control vested in the department of budget and finance by sections 26-8 and 26-35. To fulfill its responsibilities, the system may require any department or agency of the State or counties to furnish information to the system to carry out the purposes of this chapter."

SECTION 4. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

**"§88-73 Service retirement.** ~~[Retirement of a member on a service retirement allowance shall be made by the board of trustees or its designee as follows:~~

~~(1) (a) Any member who has at least five years of credited service and who has attained age fifty-five or any member who has at least twenty-five years of credited service or any member who has at least ten years of credited service, which includes service as a judge before July 1, 1999, an elective officer, or a legislative officer, [may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired. In the event of the death of a member after the date of the filing of the member's written application to retire, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance under the option selected by the member which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement;] shall become eligible to receive a retirement allowance after the member has terminated service.~~

~~[(2)] (b) Any member who first earned credited service as a judge after June 30, 1999, [may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired; provided that the member] and who has at least five years of credited service and has attained age fifty-five or has at least twenty-five years of credited service[.] shall become eligible to receive a retirement allowance after the member has terminated service.~~

(c) A member may retire upon the written application specifying the date of retirement, which shall not be less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

(d) In the event of the death of a member after the date of the filing of the member's written application to retire, but prior to the effective date of retirement, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance payable under the option selected by the member [which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement]; provided that the member meets the eligibility requirements to retire on the member's date of death. The designated beneficiary shall be eligible for a retirement benefit, if any, no earlier than thirty days from the date the application was filed or the day following the member's date of death, whichever is later. Retirement benefits shall be effective on the first day of a month, except for the month of December when benefits shall be effective on the first or last day of the month.

~~[(3)] (e) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position[.].~~

[(4)] (f) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge [elected] makes an election to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of the member's average final compensation, shall be used as the [effective date of retirement; provided that the] date the member is eligible to receive a service retirement benefit. The elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service; provided further that upon leaving active service the elective officer or judge shall receive the retirement allowance effective on the first day of a month following the member's termination, provided for in section 88-74, together with the post retirement allowances provided for in section 88-90[; which post]. Post retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day[; and].

[(5)] (g) In the case of a class A or B member who also has prior credited service under part VII, total credited service as a class A, class B, and class C member shall be used to determine the eligibility for retirement allowance."

SECTION 5. Section 88-75, Hawaii Revised Statutes, is amended to read as follows:

**“§88-75 Ordinary disability retirement.** Upon application of a member in service or on leave without pay, or the person appointed by the family court as guardian of an incapacitated member, any member who has ten or more years of credited service shall be retired by the board of trustees on an ordinary disability

retirement allowance if the medical board after a medical examination of the member certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

Upon approval by the board, the member shall be eligible to receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall become effective [upon the date specified by the board, which shall be no earlier than thirty days after the date the application is filed.] on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.”

SECTION 6. Section 88-79, Hawaii Revised Statutes, is amended to read as follows:

**“§88-79 Service-connected disability retirement.** (a) Upon application of a member, or the person appointed by the family court as guardian of an incapacitated member, any member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on the member’s part, may be retired by the board of trustees for service-connected disability; provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer’s report of the accident submitted to the director of labor and industrial relations;
- (2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workers’ compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of the service performed by the member resulting in the member’s disability and that the disability was not the result of wilful negligence on the part of the member; and
- (4) The medical board certifies that the member is incapacitated for the further performance of duty and that the member’s incapacity is likely to be permanent.

(b) In the case of firefighters, police officers, and sewer workers, the effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the result of some occupational hazard for the purpose of determining occupational disability retirement under this section.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in permanent incapacity to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter’s, police officer’s, or sewer worker’s part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry

into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition.

(c) The board may waive strict compliance with the time limits within which a report of the accident and an application for service-connected disability retirement must be filed with the board if it is satisfied that the failure to file within the time limited by law was due to ignorance of fact or law, inability, or to the fraud, misrepresentation, or deceit of any person, or because the applicant was undergoing treatment for the disability or was receiving vocational rehabilitation services occasioned by the disability.

(d) The board ~~[shall have the power to]~~ may determine whether or not the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

- (1) The certification made by the head of the agency in which the member is employed; or
- (2) A finding to this effect by the medical board.

(e) Upon approval by the board, the member shall be eligible to receive a service-connected disability retirement benefit after the member has terminated service. Retirement shall become effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed."

SECTION 7. Section 88-81, Hawaii Revised Statutes, is amended to read as follows:

**“§88-81 Average final compensation.** (a) Average final compensation is ~~[(1) for employees who have become members prior to January 1, 1971,]~~ the average annual compensation pay or salary upon which a member has made contributions as required by sections 88-45 and 88-46~~[(A) during]~~.

(b) The average final compensation of members retiring prior to January 1, 2003, shall be calculated as follows:

- (1) For employees who become members prior to January 1, 1971:
  - (A) During the member's five highest paid years of credited service, ~~[(B) at the option of the member, during the member's three highest paid years of credited service; provided that no payment of salary in lieu of vacation shall be included in the computation, or (C) if]~~ including vacation pay, or the three highest paid years of credited service excluding vacation pay, whichever is greater;  
or
  - (B) If the member has less than three years of credited service, [then] during the member's actual years of credited service; ~~or (2) for]~~.
- (2) For employees who become members on or after January 1, 1971:
  - (A) During the member's three highest paid years of credited service, excluding vacation pay; or
  - (B) If the member has less than three years of credited service, during the member's actual years of credited service.

(c) The average final compensation of members retiring after December 31, 2002, shall be calculated as follows:

- (1) ~~For employees who become [{}]members[{}]~~ ~~[on or after] prior to January 1, 1971[; the average annual compensation pay or salary upon which a member has made contributions as required by sections 88-45 and 88-46, (A) during]~~

- (A) During the member's five highest paid calendar years of service including vacation pay, or the last sixty months of credited service including vacation pay, whichever is greater; or
- (B) During the member's three highest paid calendar years of [credited] service[-; provided that no payment of salary in lieu of vacation shall be included in the computation, or (B)] excluding vacation pay, or the last thirty-six months of credited service excluding vacation pay, whichever is greater; or
- (C) During the member's actual years of credited service, if the member has less than three years of credited service[-, then during the member's actual years of credited service;-];
- (2) For employees who become members on or after January 1, 1971:
  - (A) During the member's three highest paid calendar years of service excluding vacation pay or the last thirty-six months of credited service excluding vacation pay, whichever is greater; or
  - (B) During the member's actual years of credited service, if the member has less than three years of credited service; and
- (3) If a member has credited service as a nine, ten, or eleven-month employee and is paid over twelve months,
  - (A) During the member's three highest paid school contract years of service; or
  - (B) During the member's actual years of credited service, if the member has less than three years of credited service.

~~[(b)]~~ (d) In computing the compensation of a judge, the compensation paid to the judge by the United States as well as by the Territory shall be included.

~~[(e)]~~ (e) For service rendered as a member of the legislature from and after November 5, 1968, the actual annual salary of a member shall be the only amount used for determining the member's average final compensation. For service rendered as a member of the legislature prior to November 5, 1968, and after admission of this State into the Union, the annual compensation of a member shall be computed, for the purpose of determining the member's average final compensation, as follows: during a year in which a general session was held, it shall be deemed to have been an amount equal to four times the salary of a member of the legislature for a general session; and during a year in which a budget session was held, it shall be deemed to have been an amount equal to six times the salary of a member of the legislature for a budget session. For service rendered as a member of the legislature prior to the admission of this State into the Union, the annual compensation of a member shall be deemed to have been four times the salary of a member of the legislature for a regular session for each year during the member's term of office.

~~[(d)]~~ (f) If a member has credited service rendered as an elective officer or as a legislative officer, the member's average final compensation shall be computed separately for each category of service as follows:

- (1) For the three highest paid years of credited service as an elective officer, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service;
- (2) For the three highest paid years of credited service as a legislative officer, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service;
- (3) For the three highest paid years of credited service as a judge, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service; and
- (4) For the three highest paid years of credited service not included in paragraph (1), (2), or (3), or if the member has less than three years of

credited service in that capacity, then the member's actual years of credited service.'

SECTION 8. Section 88-84, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receipt of proper proof of a member's death occurring in service or while on authorized leave without pay, there shall be paid to the member's designated beneficiary an ordinary death benefit consisting of:

- (1) The member's accumulated contributions and, if no pension is payable under section 88-85, an amount equal to fifty per cent of the compensation earned by the member during the year immediately preceding the member's death if the member had at least one year but not more than ten full years of credited service, which amount shall increase by five per cent for each full year of service in excess of ten years, to a maximum of one hundred per cent of the compensation; provided that if the member had at least one year of credited service, the amount, together with the member's accumulated contributions shall not be less than one hundred per cent of the compensation; ~~or~~
- (2) If the member had ten or more years of credited service at the time of death in service, and the death occurred after June 30, 1988, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired ~~[the day prior to death under option 3 of section 88-83 and computed on the basis of section 88-76; or]~~ on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 3 of section 88-83 and computed on the basis of section 88-76; or
- (3) If the member was eligible for service retirement at the time of death in service, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired ~~[the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83.]~~ on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 2 of section 88-83.”

SECTION 9. Section 88-85, Hawaii Revised Statutes, is amended to read as follows:

**“§88-85 Accidental death benefit.** Upon the receipt of proper proofs of a member's death by the board of trustees, there shall be paid to the member's designated beneficiary or to the member's estate the amount of the member's accumulated contributions and if, upon the receipt of evidence or proofs that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member, there shall be paid in lieu of the ordinary death benefits provided by the contributions of the State or county, effective on the first day of a month following the member's death, except for the

month of December when benefits shall be effective on the first or last day of the month, a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship; ~~[or]~~
- (2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under such age, divided in such manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains such age; or
- (3) If there is no surviving spouse or reciprocal beneficiary or child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no such nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in death to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition."

SECTION 10. Section 88-281, Hawaii Revised Statutes, is amended to read as follows:

**"§88-281 Service retirement.** (a) A member who has ten years of credited service and has attained age sixty-two, or a member with thirty years credited service who has attained the age of fifty-five, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) If a member has at least twenty-five years of credited service as a sewer worker or as a water safety officer<sup>1</sup> of which the last five or more years prior to retirement is credited in such a capacity, then the sewer worker or water safety officer shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(c) A member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) A member who has ten years of credited service and terminates service prior to attaining age sixty-two shall have a vested right and shall be eligible to receive a retirement allowance when the member has attained age sixty-five.

(e) A member may retire upon the written application to the board, specifying the desired date of retirement, which shall be not less than thirty days nor more than ~~[ninety]~~ one hundred fifty days subsequent to the date of filing. ~~[If the member dies after the date of filing the application to retire, but prior to the effective date of~~



retirement, the member's designated beneficiary may receive the member's retirement benefits, which shall be computed as though the member had died on the effective date of retirement under the mode of retirement selected.] Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

(f) In the event of the death of a member after the date of the filing of the member's written application to retire, but prior to the effective date of retirement, the designated beneficiary, otherwise the personal representative of the member's estate shall receive the allowance payable under the option selected by the member; provided that the member meets the eligibility requirements to retire on the member's date of death. The designated beneficiary shall be eligible for a retirement benefit no earlier than thirty days from the date the application was filed or the day following the member's date of death, whichever is later. Retirement benefits shall be effective on the first day of a month, except for the month of December when benefits shall be effective on the first or last day of the month."

SECTION 11. Section 88-284, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon approval by the board, the member shall receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall become effective [upon the date specified by the board, which shall be no earlier than thirty days after the date the application is filed.] on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed."

SECTION 12. Section 88-286, Hawaii Revised Statutes, is amended to read as follows:

**"§88-286 Death benefit.** (a) The surviving spouse or reciprocal beneficiary and dependent child or children of a member at the time of the member's death shall be eligible for a death benefit if the member suffers either an ordinary death while in service or on authorized leave without pay after accumulating ten years of credited service or an accidental death.

(b) In the case of ordinary death, the death benefit shall be as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to one-half of the member's accrued maximum retirement allowance unreduced for age, payable until remarriage, marriage, or entry into a new reciprocal beneficiary relationship, as if the member had retired [the day prior to death;] on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed; and for each dependent child an allowance equal to ten per cent of the member's accrued maximum retirement allowance unreduced for age, payable until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued retirement allowance unreduced for age; or
- (2) For the surviving spouse or reciprocal beneficiary, if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, an allowance that would have been payable as if the member had retired [the day prior to death] on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be

allowed and had elected to receive a retirement allowance under option B of section 88-283; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child shall receive an allowance equal to twenty per cent of the member's accrued maximum retirement allowance unreduced for age, payable on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed, until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued maximum retirement allowance unreduced for age.

For the purpose of determining eligibility for the ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

(c) In the case of accidental death, the death benefit shall be effective on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed, as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to thirty per cent of the member's average final compensation, payable until remarriage, marriage, or upon entry into a new reciprocal beneficiary relationship;
- (2) If there is a surviving spouse or reciprocal beneficiary, each dependent child under eighteen shall receive an allowance equal to the greater of:
  - (A) Ten per cent of the member's accrued maximum retirement allowance unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued maximum retirement allowance unreduced for age; or
  - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed six per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child under age eighteen shall receive an allowance equal to the greater of:
  - (A) Twenty per cent of the member's accrued maximum retirement allowance unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued maximum retirement allowance unreduced for age; or
  - (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed twelve per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen."

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

**Note**

1. Prior to amendment “,” appeared here.

**ACT 129**

S.B. NO. 2724

A Bill for an Act Relating to Real Estate.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 421H-6, Hawaii Revised Statutes, is amended to read as follows:

**“§421H-6 Arbitration of disputes.** (a) At the request of any party, any dispute concerning or involving one or more stockholders and a limited-equity housing corporation, its board of directors, managing agent, or one or more other stockholders relating to the interpretation, application, or enforcement of this chapter or the corporation’s charter of incorporation, bylaws, or administrative rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with ~~[the rules adopted by the real estate commission and the provisions of]~~ chapter [658A; ~~provided that~~] 658 and the Condominium Property Regime Rules on Arbitration of Disputes of the American Arbitration Association ~~[shall be used until the commission adopts its rules]~~; provided ~~[further]~~ that where any arbitration rule conflicts with chapter [658,] 658A, chapter [658] 658A shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties; provided further that the proceedings shall be concluded ninety days after the commencement of the arbitration unless extended by mutual consent of the parties involved and their counsel. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

(b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:

- ~~[(1) The real estate commission;~~
- ~~(2)] (1) The mortgagee of a mortgage of record;~~
- ~~[(3)] (2) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a stockholder, a director, or managing agent, such person [shall], in those capacities, shall be subject to [the provisions of]~~ subsection (a);
- ~~[(4)] (3) Actions seeking equitable relief involving threatened property damage or the health or safety of stockholders or any other person;~~
- ~~[(5)] (4) Actions to collect assessments which are liens or subject to foreclosure;~~
- ~~[(6)] (5) Personal injury claims; or~~

- ~~[(7)]~~ (6) Actions for amounts in excess of \$2,500 against a limited-equity housing corporation, a board of directors, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the limited-equity housing corporation or its board of directors would be unavailable because action by arbitration was pursued.”

SECTION 2. Section 467-1.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[(1)]~~**§467-1.6** **Principal brokers.** (a) The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.

(b) The principal broker shall be responsible for:

- (1) The client trust accounts, disbursements from those accounts, and the brokerage firm’s accounting practices;
- (2) The brokerage firm’s records, contracts, and documents;
- (3) All real estate contracts of the brokerage firm and its handling by the associated real estate salesperson;
- (4) The proper handling of any commission application, real estate license application, or renewal application that the principal broker or the brokerage firm expressly agrees to handle on behalf of the applicant, including without limitation, verifying for completeness and appropriate fees, and mailing or delivering the appropriate documents to the commission by the required deadline;
- (5) Developing policies and procedures for the brokerage firm concerning the handling of real estate transactions and the conduct of the associated real estate licensees and other staff, including education and enforcement of the policies and procedures;
- (6) Setting a policy on continuing education requirements for all associated real estate licensees in compliance with the statutory requirement;
- (7) Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active;
- (8) Establishing and maintaining a training program for all associated real estate licensees; and
- (9) Ensuring that all associated real estate licensees are provided information and training on the latest amendments to real estate licensing laws and rules as well as other related laws and rules.

(c) The principal broker may delegate management and supervision duties to one or more brokers in charge subject to the principal broker’s written policies and procedures. The principal broker shall be responsible for the education, enforcement, and records required of such policies and procedures.”

SECTION 3. Section 467-9.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No individual shall be eligible for the licensing examination unless the individual is:

- (1) A United States citizen ~~[of the]~~, a United States~~[r]~~ national, or an alien ~~[who is]~~ authorized to work in the United States, and of the age of majority; and
- (2) Applying for:
  - (A) The real estate salesperson examination and has satisfactorily completed a commission-approved preclicensing course for real estate salesperson candidates, which includes real estate principles, or its equivalent as determined by the commission; or

- (B) The real estate broker examination and:
- (i) ~~[Is currently licensed as a]~~ Holds a current, unencumbered Hawaii real estate salesperson[;] license or a current, unencumbered real estate salesperson or broker license in another state or in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission;
  - (ii) Has satisfactorily completed a commission-approved preclicensing course for real estate broker candidates, or its equivalent as determined by the commission; and
  - (iii) Has experience as a full-time [state-licensed] Hawaii-licensed real estate salesperson associated with a Hawaii-licensed real estate broker for at least three years of the five-year period immediately prior to the submission of the experience certification application and has practical real estate salesperson experience, as certified by the principal broker [or], principal brokers, broker in charge, or brokers in charge, as the case may be, during the subject period. The candidate shall secure commission approval of the candidate's experience certification application prior to the date of the examination. Subject to commission approval, a candidate may request a determination of equivalency [for a portion of the experience requirement based on real estate license experience in another state, as determined by the commission.] for the experience requirement based on real estate salesperson license experience or a current, unencumbered real estate broker license in another state, or in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission."

SECTION 4. Section 467-11.5, Hawaii Revised Statutes, is amended to read as follows:

**“§467-11.5 Prerequisites for license renewal.** (a) Prior to the license renewal of a real estate broker or real estate salesperson, the licensee shall provide the commission with proof of having attended ten hours of continuing education or its equivalent as determined by the commission during the two-year period preceding the application for renewal. Failure to satisfy the continuing education requirement by the license expiration date shall result in the renewed license being automatically placed on an “inactive” status.

(b) To reactivate a license which has been placed on an “inactive” status, the licensee shall submit to the commission proof of having satisfied the continuing education requirement of this section, a complete application setting forth the information as may be prescribed or required by the commission, and payment of the proper fee.

(c) No license shall be renewed if the license trade name, partnership, or corporation is not currently registered with the department of commerce and consumer affairs.

(d) Upon submission of a renewal application, an individual real estate licensee, who holds a current, unencumbered real estate license in another state, or who holds a current, unencumbered real estate license in a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission, may request a determination of

equivalency for the elective course hours of the continuing education requirement. The equivalency shall be based on the successful completion of the continuing education requirements in the other state or jurisdiction prior to submission of the renewal application. Approval of the equivalency shall be subject to the real estate licensee completing the commission-designated core course, as determined by the commission.”

SECTION 5. Section 514A-95, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-95 Managing agents.** (a) Every managing agent shall:

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under article 8 of chapter 412;
- (2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include the name, business address, phone number, and names of association of apartment owners managed;
- (3) Obtain and keep current a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of apartments of the association of apartment owners managed by the managing agent; provided that the amount of the fidelity bond shall not be less than \$20,000 nor greater than \$100,000. Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond or a certification statement from an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirement of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association of apartment owners funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The fidelity bond shall protect the managing agent against the loss of any association of apartment owners’ moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the condi-

tions and terms by which it may grant an exemption or a bond alternative, or permit deductibles;

- (4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association of apartment owners, and apply the fidelity bond proceeds, if any, to reduce the association of apartment owners' loss. If more than one association of apartment owners suffers a loss, the managing agent shall divide the proceeds among the associations of apartment owners in proportion to each association of apartment owners' loss. An association of apartment owners may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association of apartment owners cannot recover its loss from the fidelity bond proceeds of the managing agent, the association of apartment owners may recover by court order from the real estate recovery fund established under section 467-16, provided that:
  - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
  - (B) The managing agent is a licensed real estate broker; and
  - (C) The association of apartment owners fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;
- (5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and
- (6) Report immediately in writing to the commission any changes to the information contained on the registration application or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements.

(b) The commission may deny any registration or reregistration application or terminate a registration without hearing if the fidelity bond and its evidence fail to meet the requirements of this chapter and the rules adopted pursuant thereto.

(c) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent.

(d) The registration and fidelity bond requirements of this section shall not apply to active real estate brokers in compliance with and licensed under chapter 467."

SECTION 6. Section 421H-5, Hawaii Revised Statutes, is repealed.

SECTION 7. Until such time as administrative rules are adopted, the applications for determinations of equivalency to the experience requirement and to the continuing education requirement each shall be assessed a \$25 nonrefundable application fee in addition to any other applicable fees.

SECTION 8. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 130

S.B. NO. 2732

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 414, Hawaii Revised Statutes, is amended by adding to part XV, subpart D, a new section to be appropriately designated and read as follows:

**“§414- Trustees or receivers for dissolved corporations; appointment; powers; duties.** (a) When any corporation organized and authorized to issue shares under the laws of this State shall be or shall have been dissolved, or shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the application complies with the requirements of subsection (b), and that the persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) An application authorized by subsection (a) shall be made only if:

- (1) At least five years have passed from the effective date of the dissolution in the case of a voluntary dissolution under section 414-381 or 414-382, or a voluntary dissolution under any statute previously effective in this State;
- (2) At least two years have passed from the effective date of the dissolution in the case of an administrative or judicial dissolution under section 414-402 or 414-414, or an administrative, involuntary, or judicial dissolution under any statute previously effective in this State; or
- (3) At least two years have passed from the date the corporation ceased to exist under this chapter, or any statute previously effective in this State.

(c) In the event of an appointment of any trustee or receiver of and for a corporation administratively dissolved under section 414-402, the trustee or receiver shall pay to the State out of any funds that may come into the trustee's or receiver's hands as trustee or receiver, a sum equal to any penalty imposed under section 414-473.

(d) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between the terms and provisions of this section and any such common law, statute, or rule on the subject, the more beneficial provisions favoring the applicant shall prevail.”

SECTION 2. Section 414-3, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be



retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.”

SECTION 3. Chapter 414D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . SUPERSEDING CHAPTERS**

**§414D- Superseding chapters.** In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, 514A, or 514E, the provisions of chapter 421J, 514A, or 514E shall supersede and control the provisions of this chapter.”

SECTION 4. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

**“§414D- Miscellaneous charges.** The department director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, \$20; and
- (2) At the time of any service of process on the department director as agent for service of process of a corporation, \$25, which amount may be recovered as taxable costs by the party to the action causing the service to be made if that party prevails in the action.”

SECTION 5. Chapter 425, Hawaii Revised Statutes, is amended by adding to part I five new sections to be appropriately designated and to read as follows:

**“§425- Execution of statements.** Each statement or document required by this chapter to be filed with the director of commerce and consumer affairs shall be signed and certified by at least one partner.

**§425- Registered office and registered agent.** Each domestic partnership or foreign partnership shall continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
  - (A) An individual who resides in this State and whose business office is identical with the registered office;
  - (B) A domestic entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office; or
  - (C) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

**§425- Designation or change of registered office or registered agent.** (a) A partnership that does not already have a registered office and registered agent shall designate its registered office and registered agent by delivering to the director of commerce and consumer affairs for filing, a statement of designation that sets forth:

- (1) The name of the partnership;
- (2) The street address of its initial registered office in the State and the name of its initial registered agent at its initial registered office; and

- (3) That the street addresses of its initial registered office and agent shall be identical.
- (b) A partnership may change its registered office or its registered agent by delivering to the director of commerce and consumer affairs for filing, a statement of change that sets forth:
  - (1) The name of the partnership;
  - (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
  - (3) That after the change or changes are made, the street addresses of its registered office and agent shall be identical.
- (c) If the registered agent's street address changes, the registered agent may change the street address of the partnership's registered office by notifying the partnership in writing of the change and signing (either manually or in facsimile) and delivering to the director of commerce and consumer affairs for filing, a statement that complies with the requirements of subsection (a) and recites that the partnership has been notified of the change.

**§425- Resignation of registered agent.** (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the director of commerce and consumer affairs for filing, a signed statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the partnership at its principal office.

(c) The appointment of the agent shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**§425- Service on partnership.** (a) Service of any notice or process authorized by law on any partnership, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent or partner of the partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or partner cannot be found, upon any person who is found in charge of the property, business, or office of the partnership within the jurisdiction of the court, officer, or board.

(b) If no other person in charge of the property, business, or office of the partnership can be found within the State, and in case the partnership has not filed with the director of commerce and consumer affairs pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State may be served, and the person named is not found within the State, service may be made upon the partnership by registered or certified mail, return receipt requested, addressed to the partnership at its principal office. Service by registered or certified mail shall be perfected at the earliest of:

- (1) The date the partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the partnership; or
- (3) Five days after its deposit in the United States mail, as evidenced by postmark, if mailed postpaid and correctly addressed.

(c) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a partnership in any other manner permitted by law."

SECTION 6. Chapter 425D, Hawaii Revised Statutes, is amended by adding to article 1 four new sections to be appropriately designated and to read as follows:

**“§425D- Registered office and registered agent.** Each domestic limited partnership or foreign limited partnership shall continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
  - (A) An individual who resides in this State and whose business office is identical with the registered office;
  - (B) A domestic entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office; or
  - (C) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

**§425D- Designation or change of registered office or registered agent.**

(a) A domestic limited partnership or foreign limited partnership that does not already have a registered office and registered agent shall designate its registered office and registered agent by delivering to the director for filing, a statement of designation that sets forth:

- (1) The name of the limited partnership;
- (2) The street address of its initial registered office in the State and the name of its initial registered agent at its initial registered office; and
- (3) That the street addresses of its initial registered office and agent shall be identical.

(b) A domestic or foreign limited partnership may change its registered office or its registered agent by delivering to the director for filing, a statement of change that sets forth:

- (1) The name of the limited partnership;
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- (3) That after the change or changes are made, the street addresses of its registered office and agent shall be identical.

(c) If the registered agent's street address changes, the registered agent may change the street address of the limited partnership's registered office by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the director for filing, a statement that complies with the requirements of subsection (a) and recites that the limited partnership has been notified of the change.

**§425D- Resignation of registered agent.** (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the director for filing, a signed statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the limited partnership at its principal office.

(c) The appointment of the agent shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**§425D- Service on partnership.** (a) Service of any notice or process authorized by law on any limited partnership, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent or general partner of the limited

partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or general partner cannot be found, upon any person who is found in charge of the property, business, or office of the limited partnership within the jurisdiction of the court, officer, or board.

(b) If no other person in charge of the property, business, or office of the limited partnership can be found within the State, and in case the limited partnership has not filed with the director pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State may be served, and the person named is not found within the State, service may be made upon the limited partnership by registered or certified mail, return receipt requested, addressed to the limited partnership at its principal office. Service by registered or certified mail shall be perfected at the earliest of:

- (1) The date the limited partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the limited partnership; or
- (3) Five days after its deposit in the United States mail, as evidenced by postmark, if mailed postpaid and correctly addressed.

(c) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner permitted by law."

SECTION 7. Chapter 482, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§482- Administrative order of abatement for infringement of trade name.** (a) Any individual or sole proprietor with a currently registered trade name in this State claiming that the name of any entity registered or authorized to transact business under the laws of this State is substantially identical to, or confusingly similar to, its trade name may file a petition with the director for an administrative order of abatement to address the infringement of its trade name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by chapter 91 and the registrant shall be given an opportunity to respond to the petition at the hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but require the entity to:
  - (A) Register a new trade name with the director; and
  - (B) Conduct business in this State under the new trade name; or
- (2) Require the entity to change its registered name, and to:
  - (A) Register a new trade name with the director; and
  - (B) Conduct business in this State under the new trade name.

If the entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapter 414, 414D, 415A, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by

the circuit court of any such proceeding shall be de novo. Review of any final decision of the circuit court shall be governed by chapter 602.”

SECTION 8. Section 414-4, Hawaii Revised Statutes, is amended to read as follows:

“§414-4 Notice. (a) Notice under this chapter [~~must~~] shall be in writing unless oral notice is reasonable under the circumstances.

(b) Notice is effective if communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder’s address shown in the corporation’s current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

(h) Without limiting the manner by which notice otherwise may be given to shareholders, notice to shareholders given by the corporation under this chapter, the articles of incorporation, or the bylaws shall be effective if provided by electronic transmission consented to by the shareholder to whom the notice is given. Any consent shall be revocable by the shareholder by written notice to the corporation. Any consent shall be deemed revoked if:

- (1) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and
- (2) The inability to deliver becomes known to the secretary or an assistant secretary of the corporation, to the transfer agent, or other person responsible for giving notice; provided that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(i) Notice given pursuant to subsection (h) shall be deemed given:

- (1) If by facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice;

- (2) If by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;
- (3) If by a posting on an electronic network together with separate notice to the shareholder of such specific posting, upon the later of the posting and the giving of such separate notice; and
- (4) If by any other form of electronic transmission, when directed to the shareholder.

An affidavit of the secretary, assistant secretary, transfer agent, or other agent of the corporation that the notice has been given by a form of electronic transmission, in the absence of fraud, shall be prima facie evidence of the facts stated therein.”

SECTION 9. Section 414-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Articles of dissolution, articles of conversion, and articles of merger or share exchange may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed.”

SECTION 10. Section 414-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The articles of incorporation ~~[must]~~ shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414-51;
- (2) The number of shares the corporation is authorized to issue;
- (3) The mailing address of the corporation’s initial principal office, the street address of the corporation’s initial registered office, and the name of its initial registered agent at [that] its initial registered office; and
- (4) The name and address of each incorporator.”

SECTION 11. Section 414-61, Hawaii Revised Statutes, is amended to read as follows:

**“§414-61 Registered office and registered agent.** ~~[(a) Except as provided in subsection (b), each]~~ Each corporation shall continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
  - (A) An individual who resides in this State and whose business office is identical with the registered office;
  - (B) A domestic entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office; or
  - (C) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

~~[(b) A corporation may, but shall not be required to maintain a registered office and a registered agent in this State during the time that the corporation has at least one officer or director who is a resident of this State.]”~~

SECTION 12. Section 414-62, Hawaii Revised Statutes, is amended to read as follows:

**“§414-62 Designation or change of registered office or registered agent.**

(a) A corporation that does not already have a registered office and registered agent ~~[may]~~ shall designate its registered office and registered agent by delivering to the department director for filing a statement of designation that sets forth:

- (1) The name of the corporation;
- ~~[(2) The street address of its registered office;~~
- ~~(3) The name of its registered agent;]~~
- (2) The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and
- ~~[(4) (3) That the street addresses of its registered office and [the business office of its registered] agent [will] shall be identical.~~

(b) A corporation may change its registered office or its registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- ~~[(2) The street address of its current registered office;~~
- ~~(3) If the current registered office is to be changed, the street address of the new registered office;~~
- ~~(4) The name of its registered agent;~~
- ~~(5) If the current registered agent is to be changed, the name of the new registered agent;]~~
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- ~~[(6) (3) That after the change or changes are made, the street addresses of its registered office and [the business office of its registered] agent [will] shall be identical.~~

(c) If the registered agent's street address ~~[of the registered agent's business office]~~ changes, the registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.”

SECTION 13. Section 414-85, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§414-85]~~ Share options.** A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued. The documents evidencing such rights, options, or warrants may include conditions that preclude the holder or holders, including any subsequent transferees, of at least a specified percentage of the common shares of a corporation from exercising such rights, options, or warrants.”

SECTION 14. Section 414-121, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§414-121]~~ Annual meeting.** (a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office. Notwithstanding the foregoing, the bylaws may authorize the board

of directors, in its sole discretion, to determine that the annual meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized under subsection (c).

(c) If authorized by the board of directors in its sole discretion, and subject to guidelines and procedures adopted by the board, shareholders and proxies of shareholders not physically present at a meeting of shareholders, by means of remote communication, may:

- (1) Participate in a meeting of shareholders; and
- (2) Be deemed present in person and vote at a meeting of shareholders whether the meeting is held at a designated place or solely by means of remote communication; provided that the corporation shall:
  - (A) Implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxy of a shareholder;
  - (B) Implement reasonable measures to provide shareholders and proxies of shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with the proceedings; and
  - (C) Maintain a record of voting or action by any shareholder or proxy of a shareholder that votes or takes other action at the meeting by means of remote communication.

[(e)] (d) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws [does] shall not affect the validity of any corporate action."

SECTION 15. Section 414-122, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Special shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office. Notwithstanding the foregoing, the bylaws may authorize the board of directors, in its sole discretion, to determine that the special meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by section 414-121(c)."

SECTION 16. Section 414-123, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The court may fix the time and place of the meeting[;] or determine that the meeting shall be held solely by means of remote communication as authorized by section 414-121(c), determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting."

SECTION 17. Section 414-124, Hawaii Revised Statutes, is amended to read as follows:

**"[§414-124()] Action without meeting.** (a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action.



The action ~~[must]~~ shall be evidenced by one or more written consents describing the action taken, signed before or after the intended effective date of the action by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under section 414-123 or 414-127, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation ~~[must]~~ shall give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice ~~[must]~~ shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(e) A telegram, cablegram, or other electronic transmission consenting to an action to be taken and transmitted by a shareholder, proxy of a shareholder, or person or persons authorized to act for a shareholder or proxy of a shareholder, shall be deemed to be written, signed, and dated for the purposes of this section; provided that the telegram, cablegram, or other electronic transmission sets forth or is delivered with information from which the corporation may determine:

- (1) That the telegram, cablegram, or other electronic transmission was transmitted by the shareholder, proxy of the shareholder, or person or persons authorized to act for the shareholder or proxy of the shareholder; and
- (2) The date on which the shareholder, proxy of the shareholder, or authorized person or persons transmitted the telegram, cablegram, or other electronic transmission.

The date on which the telegram, cablegram, or other electronic transmission is transmitted shall be deemed to be the date on which the consent is signed. No consent given by telegram, cablegram, or other electronic transmission shall be deemed to have been delivered until the consent is reproduced in paper form and delivered to the corporation.

(f) Any copy, facsimile, or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that the copy, facsimile, or other reproduction shall be a complete reproduction of the entire original writing."

SECTION 18. Section 414-125, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) A corporation shall notify shareholders of the date, time, and place, if any, of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. If a meeting is held solely by means of remote communication, the notice shall also inform shareholders of the means of remote communication by which shareholders may be deemed to be present in person and allowed to vote. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting."

2. By amending subsection (e) to read:

"(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be

given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. In addition, if the annual or special shareholders' meeting was held solely by means of remote communication, and the adjourned meeting will be held by a means of remote communication by which shareholders may be deemed to be present in person and vote, notice need not be given of the new means of remote communication if the new means of remote communication is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 414-127, however, notice of the adjourned meeting shall be given under this section to shareholders who are entitled to notice of the new record date."

SECTION 19. Section 414-126, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**"[§414-124] Waiver of notice."**

2. By amending subsection (a) to read:

"(a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver ~~[must]~~ shall be in writing[, be] and be signed by the shareholder entitled to the notice[, and be] or shall be by electronic transmission by the shareholder entitled to notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records[-]; provided that the electronic transmission sets forth, or is delivered with information from which the corporation may determine that the electronic transmission was transmitted by the shareholder."

SECTION 20. Section 414-141, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The shareholders' list ~~[must]~~ shall be available for inspection by any shareholder, beginning two business days after notice of the meeting for which the list was prepared is given and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held[-], or on a reasonably accessible electronic network; provided that the information required to gain access to the shareholders' list is provided with the notice of the meeting. A shareholder, the shareholder's agent, or the shareholder's attorney, ~~[is]~~ shall be entitled on written demand to inspect and to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection. If the corporation determines that the list will be made available on an electronic network, the corporation shall take reasonable steps to ensure that such information is available only to shareholders of the corporation."

SECTION 21. Section 414-197, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A director may resign at any time by delivering ~~[written]~~ notice given in writing or by electronic transmission to the board of directors, its chairperson, or the corporation."

SECTION 22. Section 414-212, Hawaii Revised Statutes, is amended to read as follows:

**"[§414-212] Action without meeting.** (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action ~~[must]~~ shall be evidenced by one or

more ~~written~~ consents describing the action taken, given either in writing and signed before or after the intended effective date of the action by each director, or by electronic transmission, and included in the minutes or filed with the corporate records reflecting the action taken. In the case of a consent by electronic transmission, the electronic transmission shall set forth or be submitted with information from which it may be determined that the electronic transmission was authorized by the director who sent the electronic transmission.

(b) Action taken under this section ~~is~~ shall be effective when the last director signs the consent~~;~~ or gives a consent by electronic transmission, unless the consent specifies a different effective date.

(c) A consent signed or given by electronic transmission under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 23. Section 414-214, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**"~~§414-214~~ Waiver of notice ~~[of]~~ meeting."**

2. By amending subsection (a) to read:

**"(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver ~~must~~ shall be in writing, signed by the director entitled to the notice~~;~~ and or by electronic transmission by the director entitled to notice, and filed with the minutes or corporate records."**

SECTION 24. Section 414-287, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**"~~§414-287 Restated~~ or amended and restated articles of incorporation."**

2. By amending subsections (f) and (g) to read:

**"(f) A domestic corporation, at any time, may amend and restate its articles of incorporation by complying with the procedures and requirements of ~~[part XI of]~~ this ~~chapter~~ part.**

**(g) Upon ~~its~~ their adoption, the amended and restated articles of incorporation shall set forth:**

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;**
- (2) The information required by section 414-286; and**
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto."**

SECTION 25. Section 414-314, Hawaii Revised Statutes, is amended to read as follows:

**"~~§414-314~~ Merger of subsidiary. (a) A parent corporation owning at least ninety per cent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.**

**(b) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:**

- (1) The names of the parent and subsidiary; and**

- (2) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or in part.
- (c) The parent corporation shall mail a copy of the plan of merger to each shareholder of the subsidiary corporation who does not waive the mailing requirement in writing.
- (d) Articles of merger shall be delivered to the department director for filing and shall set forth:
  - (1) The name and jurisdiction of incorporation of the subsidiary corporation, and the name and jurisdiction of incorporation of the corporation owning at least ninety per cent of its shares, which is hereinafter designated as the surviving corporation;
  - (2) A statement that the plan of merger has been approved by the board of directors of the surviving corporation;
  - (3) The number of outstanding shares of each class of the subsidiary corporation and the number of shares of each class owned by the surviving corporation; and
  - (4) The date a copy of the plan of merger is mailed to shareholders of the subsidiary corporation entitled to receive the plan.
- ~~[(d)]~~ (e) The parent may not deliver articles of merger to the department director for filing until at least thirty days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary corporation who did not waive the mailing requirement.
- ~~[(e)]~~ (f) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in section 414-282).''

SECTION 26. Section 414-317, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:
- (1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;
  - (2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;
  - (3) The foreign corporation complies with section 414-315 if it is the surviving corporation of the merger or acquiring corporation of the share exchange;
  - ~~[(4)]~~ (4) ~~The foreign corporation, if it is the surviving corporation of the merger, delivers a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated to the director within sixty days after the merger becomes effective;]~~ and
  - ~~[(5)]~~ (4) Each domestic corporation complies with the applicable provisions of sections 414-311 to 414-314 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 414-315.”

SECTION 27. Section 414-319, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of each domestic limited liability company as provided in section 428-904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the department director for filing articles of merger [~~complying with section 414-315;~~] executed on behalf of each party to the merger. The articles of merger shall:

- (1) Comply with section 414-315 if the surviving entity is a domestic or foreign corporation; or
- (2) Comply with section 428-905 if the surviving entity is a domestic or foreign limited liability company.”

SECTION 28. Section 414-401, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414-401**~~]]~~ **Grounds for administrative dissolution.** (a) The department director may commence a proceeding under section 414-402 to administratively dissolve a corporation if[:

- ~~(1) The corporation has failed to file its annual report with the department director for a period of two years;~~
- ~~(2) The corporation procured its articles of incorporation through fraud;~~
- ~~(3) The corporation has continued to exceed or abuse the authority conferred upon it by law; or~~
- ~~(4) The corporation does not notify the department director within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.]~~ the corporation fails to:
  - (1) Pay any fees prescribed by law;
  - (2) File its annual report for a period of two consecutive years;
  - (3) Appoint and maintain an agent for service of process as required; or
  - (4) File a statement of a change in the name or business address of the agent as required under this chapter.

(b) Upon the expiration of the period of duration stated in the articles of incorporation, the corporation shall be deemed to have been administratively dissolved.”

SECTION 29. Section 414-402, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414-402**~~]]~~ **Procedure for and effect of administrative dissolution.**

(a) If the department director determines that one or more grounds exist under section ~~[414-401]~~ 414-401(a) for dissolving a corporation, the department director shall give written notice of the department director’s determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director shall administratively dissolve the corporation by signing a decree of dissolution that recites the ground for dissolution and its effective date. The decree shall be filed in the department director’s office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

~~[(e) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved corporation with full powers to settle its affairs.~~

~~[(f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.]'~~

SECTION 30. Section 414-433, Hawaii Revised Statutes, is amended to read as follows:

**“§414-433 Application for certificate of authority.** (a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director for filing. The application ~~[must]~~ shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 414-436;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration;
- (4) The mailing address of the corporation's initial principal office, the street address of its [principal] initial registered office[;
- (5) The street address of its registered office] in this State, and the name of its initial registered agent at [that] its initial registered office; and
- ~~[(6)]~~ (5) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of good standing duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated; provided the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 31. Section 414-438, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign corporation authorized to transact business in this State may change its registered office or its registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) Its name;
- ~~[(2)]~~ (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of its new registered office;
- (4) The name of its current registered agent;
- ~~[(5)]~~ (5) If the current registered agent is to be changed, the name of its new registered agent; and]

- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- [(6)] (3) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent [will] ~~shall~~ be identical.”

SECTION 32. Section 414-439, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The registered agent shall attach the filing receipt to ~~[one]~~ a copy of the statement of resignation and mail the copy and receipt to the registered office if not discontinued. The registered agent shall mail a second copy to the foreign corporation at its principal office address shown in its most recent annual report.”

SECTION 33. Section 414-451, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the department director for filing. The application ~~[must]~~ shall set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) That it revokes the authority of its registered agent to accept service on its behalf and ~~[appoints the department director as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this State;]~~ consents that service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the department director; and
- (4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3); ~~and~~
- (5) ~~A commitment to notify the department director in the future of any change in its mailing address].”~~

SECTION 34. Section 414-461, Hawaii Revised Statutes, is amended to read as follows:

“**§414-461 Grounds for revocation.** The department director may commence a proceeding under section 414-462 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- [(1)] ~~The foreign corporation has failed to file its annual report with the department director for a period of two years;~~
- (2) ~~The foreign corporation is without a registered agent or registered office in this State as required by this chapter;~~
- (3) ~~The foreign corporation does not inform the department director under section 414-438 or 414-439 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;~~
- (4) ~~An incorporator, director, officer, or agent of the foreign corporation signed a document that the incorporator, director, officer, or agent~~

- knew was false in any material respect with intent that the document be delivered to the department director for filing; or
- (5) ~~The department director receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.]~~
  - (1) The corporation fails to:
    - (A) Pay any fees prescribed by law;
    - (B) File its annual report for a period of two consecutive years;
    - (C) Appoint and maintain an agent for service of process as required;  
or
    - (D) File a statement of a change in the name or business address of the agent as required; or
  - (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.”

SECTION 35. Section 414-470, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each corporation shall keep accurate and complete books and records of account and shall keep and maintain at its principal office, or other place as its board of directors may order, minutes of the proceedings of its shareholders and board of directors. The books and records of account shall include accounts of the corporation’s assets, liabilities, receipts, disbursements, gains, and losses. The minutes of the proceedings of the shareholders and board of directors of the corporation shall show, as to each meeting of the shareholders or the board of directors, the time and place, if any, thereof, whether regular or special, whether notice thereof was given, and if so in what manner, the names of those present at directors’ meetings, the number of shares present or represented at shareholders’ meetings, and the proceedings at each meeting. Any of the books and records described in this subsection may be kept on, or by means of, or be in the form of, any information storage device or method; provided that the books and records can be converted into clearly legible paper form within a reasonable time. Upon the request of any person entitled to inspect the books and records pursuant to any provision of this chapter, a corporation, at its own expense, shall convert the requested stored books and records. When books and records are kept pursuant to this subsection, a clearly legible paper form produced from or by means of the information storage device or method shall be admissible as evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been; provided that the paper form accurately portrays the record.”

SECTION 36. Section 414-472, Hawaii Revised Statutes, is amended to read as follows:

“**§414-472 Annual report.** (a) Each domestic corporation, and each foreign corporation authorized to transact business in this State, shall deliver to the department director for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at [that] its registered office in this State;
- [(3) The address of its principal office;
- (4)] (3) The names and business addresses of its directors and officers; and



~~[(5)]~~ (4) A brief description of the nature of its business.

Domestic corporations shall also provide the total number of authorized shares, itemized by class and series, if any, within each class, and the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

~~[(b) Information in the annual report must reflect the state of the corporation's affairs as of December 31, of the year preceding the year of filing.~~

~~(c) Each annual report of a corporation shall be delivered to the director between January 1 and March 31 of each year in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between January 1 and March 31 in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, of the year next succeeding the calendar year in which its articles of incorporation or its application for a certificate of authority, as the case may be, was filed by the director.]~~

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for a domestic or foreign corporation whose date of incorporation or registration in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the corporation's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the corporation's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the corporation's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the corporation's affairs as of October 1 of the year when filed;

provided that if a domestic or foreign corporation is incorporated or registered in the same year in which the annual report is due, the domestic or foreign corporation shall not be required to file an annual report for that year. Thereafter, the domestic or foreign corporation shall comply with the requirements of this section.

~~[(d)]~~ (e) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it is deemed to be timely filed."

SECTION 37. Chapter 414D, Hawaii Revised Statutes, is amended by amending the designation of part XVI to read as follows:

#### **"PART [XVI.] XVII. TRANSITION PROVISIONS"**

SECTION 38. Section 414D-15, Hawaii Revised Statutes, is amended to read as follows:

**"[[§414D-15]] Notice.** (a) Notice may be oral or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Oral notice is effective when communicated if communicated in a comprehensible manner.

(d) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, shall be effective when mailed, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

~~[(d) Written]~~ (e) Except as provided in subsection (d), written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit with the United States Postal Service, as evidenced by the postmark; provided the notice is mailed with the correct address and with first class postage affixed; or
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee[;]
- ~~(4) Thirty days after its deposit with the United States Postal Service, as evidenced by the postmark; provided the notice is mailed with the correct address and with other than first class, registered, or certified postage affixed].~~

~~[(e)]~~ (f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's last known address shown in the corporation's current list of members.

~~[(f)]~~ (g) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's last known address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of the members, at the last known address appearing on the current list of members.

~~[(g)]~~ (h) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in the State), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

~~[(h)]~~ (i) If section 414D-105(b) or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern."

SECTION 39. Section 414D-32, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The articles of incorporation ~~[must]~~ shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414D-61;
- (2) The mailing address of the corporation's initial principal office, the street address of the corporation's initial registered office, and the name of its initial registered agent at ~~[that]~~ its initial registered office;
- (3) The name and address of each incorporator;
- (4) Whether or not the corporation will have members; and

- (5) Provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
  - (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
  - (2) The names and addresses of the individuals who are to serve as the initial directors;
  - (3) Provisions not inconsistent with law regarding:
    - (A) Managing and regulating the affairs of the corporation;
    - (B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members)[;], including but not limited to the power to merge with another corporation, convert to another type of entity, sell all or substantially all of the corporation's assets, or dissolve the corporation; and
    - (C) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
  - (4) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
  - (5) Provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of ~~[any such]~~ the director's duties to the corporation and its members; provided that such a provision may not eliminate or limit the liability of a director:
    - (A) For any breach of the director's duty of loyalty to the corporation or its members;
    - (B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
    - (C) For any transaction from which a director derived an improper personal economic benefit; or
    - (D) Under sections 414D-150 to 414D-152.''

SECTION 40. Section 414D-71, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§414D-71()] Registered office and registered agent.~~ ~~[(a) Except as provided in subsection (b), each]~~ Each corporation shall continuously maintain in this State:**

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
  - (A) An individual who resides in this State and whose business office is identical with the registered office;
  - (B) A domestic entity whose business office is identical with the registered office; or
  - (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.

**~~[(b) A corporation may, but shall not be required to, maintain a registered office and a registered agent in this State during the time the corporation has at least one officer or director who is a resident of the State.]”~~**

SECTION 41. Section 414D-72, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~414D-72] Designation or change of registered office or registered agent.** (a) A corporation that does not already have a registered office and registered agent ~~[may]~~ shall designate its registered office and registered agent by delivering to the department director for filing a statement of designation that sets forth:

- (1) The name of the corporation;
- ~~[(2) The street address of its registered office;~~
- ~~(3) The name of its registered agent;~~
- (2) The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and
- ~~[(4)]~~ (3) That [after the change or changes are made,] the street addresses of its registered office and [the office of its registered] agent [will] shall be identical.

(b) A corporation may change its registered office or its registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- ~~[(2) The street address of its current registered office;~~
- ~~(3) If the current registered office is to be changed, the street address of the new registered office;~~
- ~~(4) The name of its new registered agent;~~
- ~~(5) If the current registered agent is to be changed, the name of the new registered agent;~~
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- ~~[(6)]~~ (3) That after the change or changes are made, the street addresses of its registered office and [the business office of its registered] agent [will] shall be identical.

(c) If the registered agent's street address ~~[of a registered agent's office is changed,]~~ changes, the corporation's registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.”

SECTION 42. Section 414D-74, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If a corporation has no registered agent, or the registered agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the corporation at its principal office shown in the most recent annual report filed pursuant to section 414D-308. Service shall be perfected under this subsection on the earliest of:

- (1) The date the corporation receives the notice via mail service;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, if mailed and correctly addressed with ~~[first-class]~~ postage affixed.”

SECTION 43. Section 414D-89, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~414D-89] Termination, expulsion, and suspension.** (a) No member may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable, and is carried out in good faith.

- (b) A procedure [is] shall be fair and reasonable when either:
  - (1) The articles or bylaws set forth a procedure that provides:
    - (A) Not less than fifteen days prior written notice of the expulsion, suspension, or termination and the reasons therefor; and
    - (B) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or
  - (2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.
- (c) Any written notice given by mail shall be ~~[given by first class or certified mail]~~ sent to the last known address of the member shown on the corporation's records.
- (d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, shall commence within one year after the effective date of the expulsion, suspension, or termination.
- (e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension.
- (f) If the expulsion or termination of membership is the result of a judicial or nonjudicial foreclosure proceeding, no other proceeding may be brought to challenge the expulsion or termination and in no event shall this provision give rise to any right of redemption."

SECTION 44. Section 414D-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation with members shall hold a special meeting of members:

- (1) On call of its board, or the person or persons authorized to do so by the articles or bylaws; or
- (2) [If] Unless the articles or bylaws provide otherwise, if the holders of at least five per cent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.”

SECTION 45. Section 414D-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members at a meeting may be approved without a meeting of members if the action is approved by members holding at least eighty per cent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty per cent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.”

SECTION 46. Section 414D-105, Hawaii Revised Statutes, is amended to read as follows:

“**[§414D-105] Notice of meeting.** (a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided that notice of matters referred to in subsection (c)(2) shall be given as provided in subsection (c).

(c) Notice [is] shall be fair and reasonable if:

- (1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten [or if notice is mailed by other than first-class or registered mail, thirty] nor] or more than sixty days before the meeting date;
- (2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under sections 414D-150, 414D-164, 414D-182, 414D-202, 414D-222, 414D-241, and 414D-242; and
- (3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 414D-107[:], however, notice of the adjourned meeting shall be given under this section to the members of record as of the new record date.

~~[(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:~~

- ~~(1) Requested in writing to do so by a person entitled to call a special meeting; and~~
- ~~(2) The request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.]'~~

SECTION 47. Section 414D-109, Hawaii Revised Statutes, is amended to read as follows:

**“[§414D-109] Members’ list for meeting.** (a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members [must] shall be available for inspection by any member for the purpose of communication with other members concerning the meeting, at the corporation’s principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held, beginning two business days after notice of the meeting for which the list was prepared is given, and continuing through the meeting. A member, [or] a member’s agent, or a member’s attorney is entitled on written demand to inspect and, subject to the limitations of sections 414D-302(c) and 414D-305, to copy the list, at a reasonable time and at the member’s expense, during the period it is available for inspection[:]; provided that a labor union organized under this chapter with a tax exemption under section 501(c)(5) of the federal Internal Revenue Code of 1986, as amended, shall not be required to provide copies of the membership list if doing so would violate any federal or state law relating to labor unions.

(c) The corporation shall make the list of members available at the meeting; provided that a request for the list is submitted no fewer than five business days prior to the scheduled date of the meeting. Any member, member’s agent, or member’s

attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), the court of the county where a corporation's principal office (or if none in this State, its registered office) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section shall not affect the validity of action taken at the meeting.

(f) This section shall not apply to time share owners associations as defined in chapter 514E."

SECTION 48. Section 414D-113, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form; provided that no proxy shall be valid for more than three years from its date of execution[-], unless otherwise specifically provided in the corporation's by-laws."

SECTION 49. Section 414D-113, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) [Appointment of a proxy is revoked by the person appointing the proxy: (1) Attending any meeting and voting in person; or (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.] An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest without limitation include the appointment of:

- (1) A pledgee;
- (2) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (3) An employee of the corporation whose employment contract requires the appointment; or
- (4) A party to a voting agreement created under section 414D-117."

SECTION 50. Section 414D-114, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [Cumulative voting is not authorized at a particular meeting unless the meeting notice or statement accompanying the notice states that cumulative voting will take place or a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.] Unless otherwise provided in the articles or bylaws, cumulative voting shall not be permitted. If authorized in the articles or bylaws, cumulative voting may be permitted; provided that:

- (1) The meeting notice or statement accompanying the notice states that cumulative voting shall take place;
- (2) A member gives notice of the member's intent to cumulatively vote not less than forty-eight hours before the meeting or such longer period as may be required by the articles or bylaws; and
- (3) If one member gives notice of intent to cumulatively vote, all other members participating in the election may cumulate their votes without giving further notice."

SECTION 51. Section 414D-115, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~414D-115(~~1~~)] Other methods of electing directors.** A corporation may provide in its articles or bylaws for the election of directors by members or delegates:

- (1) On the basis of chapter or other organizational unit;
- (2) By region or other geographic unit;
- (3) By preferential voting; [~~or~~]
- (4) By any other reasonable method[~~];~~; or
- (5) By mail.”

SECTION 52. Section 414D-149, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include [~~indemnification~~] payment of reasonable [~~travel~~] expenses and indemnification or insurance for actions as a director as allowed by sections 414D-159 to 414D-167.”

SECTION 53. Section 414D-153, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~414D-153(~~1~~)] Required officers.** (a) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The bylaws or the board shall delegate responsibility to one of the officers to prepare minutes of the directors' and members' meetings and to authenticate records of the corporation.

(c) The same individual may simultaneously hold more than one office in a corporation.

(d) Officers of the corporation shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed for a term not to exceed one year by the board of directors.”

SECTION 54. Section 414D-155, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Any person who serves as an officer to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of or failure to perform duties of the position to which the person was appointed, unless the person was grossly



negligent in the performance of or failure to perform the duties. For purposes of this section, remuneration does not include [~~indemnification~~] payment of reasonable [~~travel~~] expenses and indemnification or insurance for actions as an officer as allowed by sections 414D-159 to 414D-167.”

SECTION 55. Section 414D-156, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [A] Except as otherwise provided in the articles of incorporation or bylaws, a board may remove any officer at any time with or without cause.”

SECTION 56. Section 414D-164, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The determination shall be made by the board of directors by majority vote of a quorum consisting of directors who are not at the time parties to the proceeding.”

SECTION 57. Section 414D-207, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other entity if:

- (1) The board of directors and members of the domestic corporation approve a plan of conversion in the manner prescribed by section 414D-202 and if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each member of the converting entity, unless otherwise agreed to by the member[;] or directors, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;
- (4) The members of the domestic corporation, as a result of the conversion, shall not become personally liable without the members’ consent, for the liabilities or obligations of the converted entity; and
- (5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.”

SECTION 58. Section 414D-232, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Corporations may make distributions upon dissolution in conformity with part XIII [~~of this chapter~~].”

SECTION 59. Section 414D-244, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;

- (4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If member or third person action was required to revoke the dissolution, the information required by section 414D-243(a)(5) ~~[and (a)(6);]~~ or (6)."

SECTION 60. Section 414D-248, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§414D-248~~]]~~ Grounds for administrative dissolution.** The department director may commence a proceeding under section 414D-249 to administratively dissolve a corporation if[:

- ~~(1) The corporation fails to file its annual report with the department director for a period of two years;~~
- ~~(2) The corporation is without a registered agent or registered office in this State for sixty days or more;~~
- ~~(3) The corporation fails to notify the department director within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;~~
- ~~(4) The corporation procured its articles of incorporation through fraud; or~~
- ~~(5) The corporation has continued to exceed or abuse the authority conferred on it by law;]~~ the corporation fails to:
  - (1) Pay any fees prescribed by law;
  - (2) File its annual report for a period of two consecutive years;
  - (3) Appoint and maintain an agent for service of process as required; or
  - (4) File a statement of a change in the name or business address of the agent as required under this chapter."

SECTION 61. Section 414D-253, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“(a)** Venue for a proceeding by the attorney general to dissolve a corporation ~~[lies] shall be in circuit court.~~ Venue for a proceeding brought by any other party named in section 414D-252 ~~[lies] shall be in the county where a corporation's principal office (or, if none in this State, its registered office) is or was last located."~~

SECTION 62. Section 414D-273, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§414D-273~~]]~~ Application for certificate of authority.** (a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director~~[-]~~ for filing. The application ~~[must] shall~~ set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 414D-276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation and period of duration;
- (4) The mailing address of the corporation's initial principal office, the street address of its [principal] initial registered office[;

- (5) ~~The address of its registered office~~ in this State, and the name of its initial registered agent at [that] its initial registered office;
- [4(6)] (5) The names and usual business or home addresses of its current directors and officers; and
- [4(7)] (6) Whether the foreign corporation has members.
- (b) The foreign corporation shall deliver with the completed application a certificate of good standing (or a document of similar import) duly authenticated by the ~~[department director]~~ secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated[:]; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate."

SECTION 63. Section 414D-276, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A foreign corporation may apply to the department director for authorization to use in this State the name of another corporation (incorporated or authorized to transact business in this State) that is substantially identical based upon the records of the department director ~~[from]~~ to the name applied for. The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing, and one or more words are added to the other entity’s name to make the name distinguishable from the name of the applicant; or
- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this State.”

SECTION 64. Section 414D-277, Hawaii Revised Statutes, is amended to read as follows:

**“[414D-277] Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in this State ~~[must]~~ shall continuously maintain in this State:

- (1) A registered office with the same address as that of its registered agent; and
- (2) A registered agent, who may be:
  - (A) An individual who resides in this State and whose office is identical with the registered office;
  - (B) A domestic business or nonprofit corporation whose office is identical with the registered office; or
  - (C) A foreign ~~[business or nonprofit corporation]~~ entity authorized to transact business in this State whose office is identical with the registered office.”

SECTION 65. Section 414D-278, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign corporation authorized to transact business in this State may change its registered office or its registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) The corporation’s name;
- [4(2)] ~~The street address of the current registered office;~~
- (3) ~~If the current registered office is to be changed, the street address of the new registered office;~~

- (4) The name of its current registered agent;
- (5) ~~If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment;]~~
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- ~~[(6)]~~ (3) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent ~~[will]~~ shall be identical.”

SECTION 66. Section 414D-282, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the department director for filing. The application ~~[must]~~ shall set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) That it revokes the authority of its registered agent to accept service on its behalf, and ~~[appoints the department director as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this State;]~~ consents that service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the department director; and
- (4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3); and
- (5) ~~A commitment to notify the department director in the future of any change in the mailing address].”~~

SECTION 67. Section 414D-283, Hawaii Revised Statutes, is amended as follows:

- 1. By amending its title to read:

**“[[§414D-283]] Grounds for revocation of certificate of authority.”**

- 2. By amending subsection (a) to read:

“(a) The department director may commence a proceeding under section 414D-284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- ~~[(1)]~~ (1) The foreign corporation has not filed its annual report with the department director for a period of two years;
- ~~(2) The foreign corporation is without a registered agent or registered office in this State as required by this chapter;~~
- ~~(3) The foreign corporation does not inform the department director under section 414D-278 or 414D-279 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;~~
- (4) An incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material

respect with the intent that the document be delivered to the department director for filing; or

- (5) ~~The department director receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.]~~
- (1) The corporation fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual report for a period of two consecutive years;
  - (C) Appoint and maintain an agent for service of process as required;  
or
  - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.”

SECTION 68. Section 414D-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

- (1) Excerpts from any records required to be maintained under section 414D-301(a), to the extent not subject to inspection under subsection (a);
- (2) Accounting records of the corporation; and
- (3) Subject to ~~[section]~~ sections 414D-109(b) and 414D-305, the membership list.”

SECTION 69. Section 414D-305, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414D-305]]~~ **Limitations on use of membership list.** Without consent of the board, a membership list or any part thereof shall not be obtained or used by any person for any purpose unrelated to a member’s interest as a member. Without limiting the generality of the foregoing, without the consent of the board, a membership list or any part thereof shall not be:

- (1) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose; ~~[-or]~~
- (3) Sold to or purchased by any person~~[-];~~ or
- (4) Published in whole or in part to the general public.”

SECTION 70. Section 414D-308, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414D-308]]~~ **Annual report ~~[for the department director]~~.** (a) Each domestic corporation, and each foreign corporation authorized to transact business in the State, shall deliver to the department director an annual report on a form prescribed and furnished by the department director that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
  - (2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at [the] its registered office in the State;
  - ~~[(3) The address of its principal office;~~
  - (4) (3) The names and business or residence addresses of its directors and principal officers;
  - ~~[(5)]~~ (4) A brief description of the nature of its activities; and
  - ~~[(6)]~~ (5) Whether or not it has members.
- ~~[(b) The information in the annual report shall reflect the state of the corporation's affairs as of December 31, of the year preceding the year of filing.~~
- (c) ~~The first annual report shall be delivered to the department director by March 31 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports shall be delivered to the department director by June 30 of the following calendar years.]~~
- (b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).
- (c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.
- (d) Effective January 1, 2003, for a domestic or foreign corporation whose date of incorporation or registration in this State falls between:
- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the corporation's affairs as of January 1 of the year when filed;
  - (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the corporation's affairs as of April 1 of the year when filed;
  - (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the corporation's affairs as of July 1 of the year when filed; and
  - (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the corporation's affairs as of October 1 of the year when filed;
- provided that if a domestic or foreign corporation is incorporated or registered in the same year in which the annual report is due, the domestic or foreign corporation shall not be required to file an annual report for that year. Thereafter, the domestic or foreign corporation shall comply with the requirements of this section.
- ~~[(d)]~~ (e) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it shall be deemed to [be] have been timely filed.

SECTION 71. Section 414D-321, Hawaii Revised Statutes, is amended to read as follows:

**“[§414D-321] Application to existing domestic corporations.** This chapter applies to all domestic corporations in existence on July 1, 2002, that were incorporated under any general statute of this State providing for incorporation of

nonprofit corporations [if the power to amend or repeal the statute under which the corporation was incorporated was reserved].”

SECTION 72. Section 414D-323, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414D-323]]~~ **Saving provisions.** (a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
- (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or
- (5) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

(c) Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to the effective date of this chapter.”

SECTION 73. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of “professional service” to read as follows:

““Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 457, 459, 460, 461, 463E, 465, 466, 471, 605, and section 554-2 ~~[and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter 415].~~”

SECTION 74. Section 415A-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon the death of a shareholder of a professional corporation, or if a shareholder of a professional corporation becomes a disqualified person, or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of the deceased shareholder or of the disqualified person may be transferred to a qualified person and, if not so transferred, shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for such purchase; provided that upon the death of a sole shareholder of a professional corporation, the personal representative of the estate of the deceased sole shareholder may elect to dissolve the professional corporation, by delivering for filing ~~[verified]~~ articles of dissolution signed by the personal representative and the surviving officer of the professional corporation. If the personal representative elects to dissolve the professional corporation, the personal representative may publish a notice to creditors ~~[in lieu of a statement of intent as required by section 415-92(3)].~~”

SECTION 75. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 415A-8;
- (2) The profession or professions that the corporation shall be authorized to practice and any other purpose allowed by the licensing laws and rules of this State;
- (3) The mailing address of its initial [-or] principal office[; ~~provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;~~], the street address of its initial registered office, and the name of its initial registered agent at its initial registered office;
- (4) The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified;
- (5) The name, title, and address of each officer; and
- (6) The number of shares the corporation is authorized to issue, and if the shares are to be divided into classes, the number of shares of each class.”

SECTION 76. Section 415A-16.7, Hawaii Revised Statutes, is amended to read as follows:

“~~[(a)]~~**§415A-16.7 Effective date of the conversion.** ~~[Upon the issuance of]~~ A conversion shall be effective upon the filing of the certificate of conversion [by] with the director[; the conversion shall be effective].”

SECTION 77. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[Whenever it is established that a professional corporation has failed to comply with any provision of this chapter, the director may declare the corporation dissolved.]~~ The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two consecutive years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

Before the director may declare a corporation dissolved, the director shall give notice of the ground or grounds for dissolution as provided in section ~~[415-94]~~ 414-401 by mailing the notice to the professional corporation at its last known address appearing in the records of the director, and may give public notice of the intention to dissolve the corporation.”

SECTION 78. Section 415A-22, Hawaii Revised Statutes, is amended to read as follows:

“~~§415A-22 Annual report [of professional corporations].~~ (a) The annual report of each professional corporation shall be delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The profession or professions that it is or are actually engaged in;



- (3) The mailing address of its principal office~~[- provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;]~~, the street address of its registered office in this State, and the name of its registered agent at its registered office in the State;
  - (4) The names and addresses of the directors and officers of the corporation;
  - (5) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, if any;
  - (6) A statement of the aggregate number of shares issued by the corporation, itemized by classes, if any; and
  - (7) A statement that all of the shareholders, not less than one-half of the directors, and all of the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.
- (b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).
- (c) Notwithstanding any of the provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.
- (d) Effective January 1, 2003, for professional corporations whose date of incorporation in this State falls between:
- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the corporation's affairs as of January 1 of the year when filed;
  - (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the corporation's affairs as of April 1 of the year when filed;
  - (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the corporation's affairs as of July 1 of the year when filed; and
  - (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the corporation's affairs as of October 1 of the year when filed;
- provided that if a professional corporation is incorporated in the same year in which the annual report is due, the professional corporation shall not be required to file an annual report for that year. Thereafter, the professional corporation shall comply with the requirements of this section."

SECTION 79. Section 421-22, Hawaii Revised Statutes, is amended to read as follows:

- "§421-22 Annual [reports.] report.** (a) An association formed under this chapter~~[- within ninety days after the close of its fiscal year;]~~ shall file with the director of commerce and consumer affairs ~~[and with the department of agriculture]~~ an annual report ~~[containing the]~~. The annual report shall contain:
- (1) The name of the association[- its place of business, and a];
  - (2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at its registered office in the State; and
  - (3) A general statement of its business operations during the fiscal year[- showing the] that includes:
    - (A) The amount of capital stock paid up [and the];

- (B) The number of shareholders, if a stock corporation, or the number of members and the amount of membership fees received, if a nonstock association; [an]
- (C) An income statement; and [its]
- (D) Its balance sheet.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for associations whose date of registration in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the association's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the association's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the association's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the association's affairs as of October 1 of the year when filed;

provided that if an association is formed in the same year in which the annual report is due, the association shall not be required to file an annual report for that year. Thereafter, the association shall comply with the requirements of this section.

(e) A copy of the report shall be submitted to the members at their annual meeting, or mailed to each member of the association, or printed in an official publication of the association.'

SECTION 80. Section 421C-29, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~421C-29[~~] Annual report.~~ (a) Every association[~~, within one hundred twenty days of the close of its fiscal year,~~] shall file with the director of commerce and consumer affairs an annual report as prescribed by the director. A copy of the report shall be submitted to the members at their annual meeting, mailed to each member of the association, or printed in an official publication of the association.**

**(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).**

**(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.**

**(d) Effective January 1, 2003, for every association whose date of registration in this State falls between:**

- (1) January 1 and March 31, the annual report shall be filed on or before March 31 of each year and shall reflect the state of the association's affairs as of January 1 of the year when filed;**
- (2) April 1 and June 30, the annual report shall be filed on or before June 30 of each year and shall reflect the state of the association's affairs as of April 1 of the year when filed;**

(3) July 1 and September 30, the annual report shall be filed on or before September 30 of each year and shall reflect the state of the association's affairs as of July 1 of the year when filed; and

(4) October 1 and December 31, the annual report shall be filed on or before December 31 of each year and shall reflect the state of the association's affairs as of October 1 of the year when filed;  
provided that if an association is formed in the same year in which the annual report is due, the association shall not be required to file an annual report for that year. Thereafter, the association shall comply with the requirements of this section."

SECTION 81. Section 425-1, Hawaii Revised Statutes, is amended to read as follows:

**"§425-1 Registration and annual statements.** (a) Whenever any general partnership is formed under the laws of this State to do business in this State, or any general partnership formed under the laws of any other jurisdiction shall do business in this State, such partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of this State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in this State. ~~[An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year.]~~ Every such registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and address of each partner;
- (3) ~~[The street]~~ The mailing address of the [chief executive office of the partnership in the State and,] partnership's initial principal office, the street address of the partnership's initial registered office in the State, and the name of its initial registered agent at its initial registered office in the State; provided that if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction [and the street address of the partnership's chief executive office and of one office in this State, if there is one;] shall also be set forth;
- (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in this State; and
- (5) The fact that none of the partners is either a minor or an incompetent person[; and
- (6) In the case of a foreign general partnership, the designation of a person residing within this State as agent for service of process and notice, and the person's street address].

(b) Every ~~[such]~~ domestic and foreign partnership shall file an annual statement with the director which shall contain the information specified in subsection (a) (1), (2), (3), (4), and (5)[; and (6)] and a listing of the names of any partner admitted, withdrawn, or who has died during the year[;]; provided that the information provided to satisfy the requirements of subsection (a)(4) shall indicate the current registered office and agent. The annual statement shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.

(d) Effective January 1, 2003, for a domestic or foreign partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, the annual statement shall be filed on or before March 31 of each year and shall reflect the state of the partnership's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, the annual statement shall be filed on or before June 30 of each year and shall reflect the state of the partnership's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, the annual statement shall be filed on or before September 30 of each year and shall reflect the state of the partnership's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, the annual statement shall be filed on or before December 31 of each year and shall reflect the state of the partnership's affairs as of October 1 of the year when filed;

provided that if a domestic or foreign partnership is registered in the same year in which the annual statement is due, the domestic or foreign partnership shall not be required to file an annual statement for that year. Thereafter, the domestic or foreign partnership shall comply with the requirements of this section.

[(e)] (e) The registration statement of a domestic partnership shall be certified by [each] any partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner.

[(d)] The registered agent of a foreign general partnership may be:

- (1) An individual who resides in this State and whose business office is identical with the registered office;
- (2) A domestic entity whose business office is identical with the registered office; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.]”

SECTION 82. Section 425-1.7, Hawaii Revised Statutes, is amended to read as follows:

**“§425-1.7 Correcting a filed document.** (a) A domestic or foreign general partnership may correct a document filed [by] with the director if the document:

- (1) Contains incorrect information; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected[:

(1) By] by<sup>1</sup> preparing and delivering to the director for filing, a statement of correction that:

[(A)] (1) Describes the document including its file date or attaches a copy of it to the statement;

[(B)] (2) Specifies the incorrect information and the reason it is incorrect or the manner in which the execution was defective;

[(C)] (3) Corrects the incorrect information or defective execution; and

[(D)] (4) Is executed and certified by a general partner[; and

(2) By delivering the statement to the director for filing].

(c) A statement of correction is effective on the effective date of the document it corrects, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed.”

SECTION 83. Section 425-11, Hawaii Revised Statutes, is amended to read as follows:

~~“§425-11 Record of statements. [The director of commerce and consumer affairs shall cause books or files to be kept in the director’s office, in which shall be recorded the several particulars required by this part to be filed in the director’s office; and such books or files shall be open to public inspection.] The director shall keep books or files in which the information required by this chapter to be filed with the director shall be recorded. The books or files shall be open to public inspection.”~~

SECTION 84. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$25;
- (3) Partnership dissolution statement, \$25;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$25;
- (6) Application for certificate of withdrawal, \$10;
- (7) Statement of correction, \$25;
- (8) Reservation of name, \$20;
- (9) Transfer of reservation of name, \$20;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$25;
- (12) Articles of conversion, \$200;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$25;
- (14) Special handling fee for review of any general partnership document, \$50;
- (15) Special handling fee for certificates issued by the director, \$25 per certificate;
- (16) Special handling fee for certification of documents, \$25;
- (17) Special handling fee for review of articles of conversion, \$150; and
- (18) Agent’s statement of change of address, [\$25] \$20 for each affected foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign general partnership.”

SECTION 85. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) [If any general partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director of commerce and consumer affairs may cancel the registration or the certificate, as the case may be, of such partnership.] The director may commence a proceeding to cancel the registration of a general partnership if the partnership fails to:~~

- ~~(1) Pay any fees prescribed by law;~~
- ~~(2) File its annual statement for a period of two consecutive years;~~
- ~~(3) Appoint and maintain an agent for service of process as required; or~~
- ~~(4) File a statement of a change in the name or business address of the agent as required under this chapter.~~

The cancellation of such registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificates required by this part.”

SECTION 86. Section 425-153, Hawaii Revised Statutes, is amended to read as follows:

**“§425-153 Statement of qualification.** [(a)] A statement of qualification shall contain:

- (1) The name of the partnership;
- [(2) The street address of the partnership’s chief executive office and, if different, the street address of an office in this State, if any;
- (3) If the partnership does not have an office in this State, the name and street address of the partnership’s agent for service of process;] and
- [(4)] (2) A statement that the partnership elects to be a limited liability partnership.

[(b) The agent of a limited liability partnership for service of process shall be:

- [(1) An individual who resides in this State and whose business office is identical with the registered office;
- (2) A domestic entity whose business office is identical with the registered office; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.]”

SECTION 87. Section 425-154, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A statement of qualification may be amended and restated at any time for any proper purpose determined by the partners. The amended and restated statement of qualification shall set forth:

- (1) All of the operative provisions of the statement of qualification as previously amended; and
- (2) A statement that the amended and restated statement of qualification supersedes the original statement of qualification and all amendments thereto.

The amended and restated statement of qualification shall be delivered to the director for filing. The director may certify the amended and restated statement of qualification as the statement of qualification currently in effect, without including the information required to be filed by paragraph [(b)(2)] (2).”

SECTION 88. Section 425-156, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before transacting business in this State, a foreign limited liability partnership shall register pursuant to part I of this chapter, file a statement of foreign qualification with the director, and submit a certificate of good standing from the state in which the partnership was formed[:]; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 89. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

**“§425-158 Statement of foreign qualification.** (a) A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:

- (A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and
  - (B) Section 425-151;
  - ~~[(2) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any;~~
  - ~~(3) The name and street address of the partnership's agent for service of process;~~
  - ~~(4) The total number of partners on the date the statement is filed;]~~ and
  - ~~[(5)] (2) A statement that the partnership elects to be a foreign limited liability partnership.~~
- ~~[(b) The agent of a foreign limited liability partnership for service of process shall be an individual who is a resident of this State or other person qualified or registered with the director to do business in the State.]]'~~

SECTION 90. Section 425-162, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**~~“[[§425-162]] Foreign limited liability partnerships; activities not constituting the transaction of business.”~~**

2. By amending subsections (a) and (b) to read:

~~“(a) Activities of a foreign limited liability partnership that do not constitute the transaction of business [for the purpose of this subpart] include:~~

- ~~(1) Maintaining, defending, or settling an action or proceeding;~~
- ~~(2) Holding meetings of its partners or carrying on any other activity concerning its affairs;~~
- ~~(3) Maintaining bank accounts;~~
- ~~(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or maintaining trustees or depositories with respect to those securities;~~
- ~~(5) Selling through independent contractors;~~
- ~~(6) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;~~
- ~~(7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;~~
- ~~(8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;~~
- ~~(9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and~~
- ~~(10) Transacting business in interstate commerce.~~

~~(b) [For purposes of this subpart, the] The ownership in this State of income-producing real property or income-producing tangible personal property, other than property excluded under subsection (a), constitutes the transaction of business in this State.”~~

SECTION 91. Section 425-163, Hawaii Revised Statutes, is amended to read as follows:

**~~“[[§425-163]] Annual [reports.] report.~~** (a) Every limited liability partnership and foreign limited liability partnership authorized to transact business in this State shall file an annual report in the office of the director that contains:

- (1) The name of the limited liability partnership or foreign limited liability partnership;
  - ~~[(2) In the case of a foreign limited liability partnership, the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;~~
  - ~~(3)]~~ (2) The mailing address of the partnership's principal office, the street address of the partnership's [chief executive] registered office in the State, and[, if different, the street address of an office of the partnership in this State, if any; and
  - (4) ~~If the partnership does not have an office in this State,] the name [and street address] of [the partnership's current] its registered agent [for service of process.] at its registered office in the State.~~
- (b) ~~[An annual report as of the preceding December 31 shall be filed on or before March 31 of each year following the calendar year in which a limited liability partnership files a statement of qualification or a foreign limited liability partnership becomes authorized to transact business in this State.] The annual report shall be filed within the time periods prescribed in subsections (c) and (d).~~
- (c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.
- (d) Effective January 1, 2003, for a domestic or foreign limited liability partnership whose date of registration in this State falls between:
- (1) January 1 and March 31, the annual report shall be filed on or before March 31 of each year and shall reflect the state of the partnership's affairs as of January 1 of the year of filing;
  - (2) April 1 and June 30, the annual report shall be filed on or before June 30 of each year and shall reflect the state of the partnership's affairs as of April 1 of the year of filing;
  - (3) July 1 and September 30, the annual report shall be filed on or before September 30 of each year and shall reflect the state of the partnership's affairs as of July 1 of the year of filing; and
  - (4) October 1 and December 31, the annual report shall be filed on or before December 31 of each year and shall reflect the state of the partnership's affairs as of October 1 of the year of filing;
- provided that if a domestic or foreign limited liability partnership is registered in the same year in which the annual report is due, the domestic or foreign limited liability partnership shall not be required to file an annual report for that year. Thereafter, the domestic or foreign limited liability partnership shall comply with the requirements of this section.
- (e) Each annual report shall be certified as correct by any partner."

SECTION 92. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director may revoke the statement of qualification of a limited liability partnership or statement of foreign qualification of a foreign limited liability partnership ~~[that fails to file an annual report for a period of two years or fails to pay the required filing fee.] if:~~

- (1) The partnership fails to:
    - (A) Pay any fees prescribed by law;
    - (B) File its annual report for a period of two consecutive years;
    - (C) Appoint and maintain an agent for service of process as required;
- or



- (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

The director shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice shall be mailed to the partnership at its last known address appearing in the records of the director. The notice shall specify the annual report that has not been filed or the fee that has not been paid, and the effective date of the revocation. The revocation shall not be effective if the specified annual report is filed and the specified fee is paid before the effective date of the revocation."

SECTION 93. Section 425-167, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**"[~~§~~425-167(~~)~~] Correction of filed documents."**

2. By amending subsections (a) and (b) to read:

**"(a) A domestic limited liability partnership or foreign limited liability partnership may correct a document filed with the director if the document:**

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

**(b) ~~To correct a~~ A document~~, a limited liability partnership or foreign limited liability partnership shall prepare and deliver~~ is corrected by preparing and delivering to the director for filing, a ~~[certificate]~~ statement of correction that:**

- (1) Identifies the document, including its filing date, or ~~[includes]~~ attaches a copy of ~~[the document to be corrected, attached to the certificate;]~~ it to the statement;
- (2) Identifies the incorrect statement, if any;
- (3) Explains why the incorrect statement, if any, is incorrect, or describes the manner in which execution of the document was defective; and
- (4) Corrects the incorrect statement or defective execution."

SECTION 94. Section 425-168, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**"[~~§~~425-168(~~)~~] Fee for recording."**

2. By amending subsections (a) and (b) to read:

**"(a) The director shall collect the following fees for the following limited liability partnership documents ~~[filed under this subpart]:~~**

- (1) ~~[For each annual]~~ Annual report ~~[filed, a fee of]~~, \$25;
- (2) ~~[For each statement]~~ Statement of qualification ~~[of limited liability partnership, a fee of]~~, \$50;
- (3) ~~[For each statement]~~ Statement of foreign qualification ~~[of limited liability partnership, a fee of]~~, \$100;
- (4) ~~[For each certificate]~~ Statement of correction ~~[or statement of]~~, amendment, ~~[a fee of]~~ restatement, or amendment and restatement, \$50;
- (5) ~~[For each certificate]~~ Certificate of good standing, ~~[a fee of]~~ \$25;
- (6) ~~[For review of articles]~~ Articles of conversion, ~~[a fee of]~~ \$200;
- (7) For any other certificate, statement, or document, ~~[a fee of]~~ \$50; ~~[and]~~
- (8) ~~[For each certification]~~ Certification of domestic or foreign partnership, ~~[a fee of]~~ \$20; and

- (9) For each agent's statement of change of registered office, \$20 for each affected domestic or foreign limited liability partnership; provided that if an agent files more than two hundred statements of change of registered office at the same time, the fee shall be reduced to \$1 for each affected domestic or foreign limited liability partnership.
- (b) The following special handling fees shall be assessed by the director for expeditious handling and review of the following documents:
  - (1) ~~[For limited liability partnerships:~~
    - ~~(A)] Statement of qualification [of limited liability partnership], \$50;~~
    - ~~(B) Certificate] (2) Statement of correction, amendment, restatement, or amendment and restatement, \$50;~~
    - ~~(C) Statement of amendment of limited liability partnership, \$50;~~
    - ~~(D)] (3) Annual report, \$50;~~
    - ~~(E)] (4) Certification of domestic or foreign limited liability partnership, \$25;~~
    - ~~(F)] (5) Certificate of good standing[;] for domestic or foreign limited liability partnership, \$25; [and~~
    - ~~(G)] (6) Articles of conversion[;] for domestic or foreign limited liability partnership, \$150;~~
  - (2) ~~For foreign limited liability partnerships:~~
    - ~~(A)] (7) Statement of foreign qualification [of limited liability partnership], \$50;~~
    - ~~(B) Certificate of correction, \$50;~~
    - ~~(C)] (8) Statement of correction, amendment, restatement, or amendment and restatement of foreign limited liability partnership, \$50;~~
    - ~~(D)] (9) Annual report, \$50;~~
    - ~~(E) Certification of foreign partnership, \$25;~~
    - ~~(F) Certificate of good standing, \$25; and~~
    - ~~(G) Articles of conversion, \$150;] and~~
  - (3) ~~(10) For any other certificate or document authorized by this subpart, \$50."~~

SECTION 95. Section 425D-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In order to form a limited partnership, a certificate of limited partnership shall be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The mailing address of the limited partnership's initial principal of-fice[;], the street address of the limited partnership's initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (3) The name and the address of each general partner;
- (4) The name and address of each limited partner;
- (5) The latest date upon which the limited partnership is to dissolve; and
- (6) Any other matter the general partners determine to include therein."

SECTION 96. Section 425D-203.5, Hawaii Revised Statutes, is amended to read as follows:

**"§425D-203.5 Annual statement.** (a) Every limited partnership shall file an annual statement ~~[on or before March 31 of each year as of December 31 of the preceding year]~~ containing the following information:

- (1) The name of the limited partnership;

- (2) The name and address of each general partner;
- (3) The name and address of each limited partner;
- (4) The [location of the principal place of business of the limited partnership in this State; and] mailing address of the limited partnership's principal office, the street address of the limited partnership's registered office in the State, and the name of its registered agent at its registered office in the State; and
- (5) The fact that none of the partners is either a minor or an incompetent person.

(b) The annual statement shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.

(d) Effective January 1, 2003, for each limited partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, an annual statement shall be filed on or before March 31 of each year and shall reflect the state of the limited partnership's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual statement shall be filed on or before June 30 of each year and shall reflect the state of the limited partnership's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual statement shall be filed on or before September 30 of each year and shall reflect the state of the limited partnership's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual statement shall be filed on or before December 31 of each year and shall reflect the state of the limited partnership's affairs as of October 1 of the year when filed;

provided that if a limited partnership is registered in the same year in which the annual statement is due, the limited partnership shall not be required to file an annual statement for that year. Thereafter, the limited partnership shall comply with the requirements of this section.

[(b)] (e) Each annual statement shall be certified as correct by any general partner."

SECTION 97. Section 425D-203.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [If any limited partnership neglects for a period of two years to file any annual statement as required by this chapter, the director may cancel the certificate of the limited partnership.] The director may commence a proceeding to cancel the certificate of a limited partnership administratively if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two consecutive years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required.

The cancellation of the certificate shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter."

SECTION 98. Section 425D-204, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each certificate required by this chapter to be filed in the office of the director shall be executed in the following manner:

- (1) An original certificate of limited partnership must be signed by [all] at least one general [partners;] partner;
- (2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner;
- (3) A certificate of cancellation must be signed by all general partners; [and]
- (4) Any other certificate or document must be signed by all general partners~~[-]; and~~
- (5) A designation or change of a registered office or agent must be signed by at least one general partner.”

SECTION 99. Section 425D-902, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-902 Registration.** (a) Before transacting business in this State, a foreign limited partnership shall register with the director. In order to register, a foreign limited partnership shall submit to the director an application for registration as a foreign limited partnership, certified and signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership;
- (2) The state and date of its formation;
- (3) ~~The [name and street] mailing address of [any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent shall be:~~
  - (A) ~~An individual who resides in this State and whose business office is identical with the registered office;~~
  - (B) ~~A domestic entity whose business office is identical with the registered office; or~~
  - (C) ~~A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office;]~~ the foreign limited partnership’s initial principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (4) ~~[The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;~~
- (5) ~~The name and address of each general partner; and~~
- (5) ~~The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is canceled or withdrawn.~~

(b) The foreign limited partnership shall deliver with the completed application a certificate of good standing duly authenticated by the secretary of state or other official having custody of limited partnership records in the state or country under whose law it is formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 100. Section 425D-906.5, Hawaii Revised Statutes, is amended to read as follows:

**"§425D-906.5 Annual statement.** (a) Every foreign limited partnership registered in this State shall file an annual statement ~~[on or before March 31 of each year as of December 31 of the preceding year]~~ containing the following information:

- (1) The name of the limited partnership;
- (2) The name and address of each general partner;
- (3) The name and address of each limited partner;
- (4) The name of the jurisdiction where the limited partnership was formed ~~[and the location of the principal place of business of the partnership;]~~, the mailing address of its principal office, the street address of its registered office in the State, and the name of its registered agent at its registered office in the State; and
- (5) The fact that none of the partners is either a minor or incompetent.

(b) The annual statement shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.

(d) Effective January 1, 2003, for each foreign limited partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, an annual statement shall be filed on or before March 31 of each year and shall reflect the state of the foreign limited partnership's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual statement shall be filed on or before June 30 of each year and shall reflect the state of the foreign limited partnership's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual statement shall be filed on or before September 30 of each year and shall reflect the state of the foreign limited partnership's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual statement shall be filed on or before December 31 of each year and shall reflect the state of the foreign limited partnership's affairs as of October 1 of the year when filed;

provided that if a foreign limited partnership is registered in the same year in which the annual statement is due, the foreign limited partnership shall not be required to file an annual statement for that year. Thereafter, the foreign limited partnership shall comply with the requirements of this section.

~~[(b)]~~ (e) Each annual statement shall be certified as correct by any general partner."

SECTION 101. Section 425D-906.6, Hawaii Revised Statutes, is amended to read as follows:

**"[[§425D-906.6]] Cancellation of registration.** ~~[If any foreign limited partnership neglects for a period of two years to file any annual statement as required by this chapter, the director may cancel the registration of such limited partnership.]~~ A certificate of registration of a foreign limited partnership to transact business in this State may be canceled by the director if:

- (1) The partnership fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual report for a period of two consecutive years;

- (C) Appoint and maintain an agent for service of process as required;  
or
- (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

The cancellation of such registration shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.”

SECTION 102. Section 428-108, Hawaii Revised Statutes, is amended to read as follows:

**“[§428-108] Change of [designated] registered office or registered agent [for service of process].** A limited liability company or a foreign limited liability company may change its [designated] registered office or its registered agent [for service of process] by delivering to the director for filing a statement of change which sets forth:

- (1) The name of the company;
- (2) The street address of its current [designated] registered office[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
- (3) If the current designated office is to be changed, the street address of the new designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
- (4) The] in this State, the name [and street address] of its current registered agent [for service of process;] at its registered office in this State, and any changes required to keep the information current; and
- (5) If the current agent for service of process or street address of that agent is to be changed, the new street address or the name and street address of the new agent for service of process.]
- (3) That after the change or changes are made, the street addresses of its registered office and registered agent shall be identical.”

SECTION 103. Section 428-109, Hawaii Revised Statutes, is amended to read as follows:

**“[§428-109] Resignation of registered agent [for service of process].** [(a) An agent for service of process of a limited liability company or a foreign limited liability company may resign by delivering to the director for filing a record of the statement of resignation.

(b) After filing a statement of resignation, the director shall mail a copy to the designated office and another copy to the limited liability company or foreign limited liability company at its principal office.

(c) An agency is terminated on the thirty-first day after the statement is filed in the office of the director.] (a) A registered agent of a domestic or foreign limited liability company may resign from the registered agent’s appointment by signing and delivering to the director for filing the signed statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the partnership at its principal office.

(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.”

SECTION 104. Section 428-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Articles of organization of a limited liability company shall set forth:

- (1) The name of the company;
- ~~[(2) The street address of the initial designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;~~
- ~~(3) The name and street address of the initial agent for service of process;]~~
- (2) The mailing address of the company’s initial principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its registered office in this State;
- ~~[(4)]~~ (3) The name and address of each organizer;
- ~~[(5)]~~ (4) Whether the duration of the company is for a specified term and, if so, the period specified;
- ~~[(6)]~~ (5) Whether the company is to be manager-managed, and:
  - (A) If so, the name and address of each initial manager, and the number of initial members; or
  - (B) If not, the name and address of each initial member; and
- ~~[(7)]~~ (6) Whether the members of the company are to be liable for its debts and obligations under section 428-303(c).”

SECTION 105. Section 428-207, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A record is corrected:

- (1) By preparing articles of correction that:
  - (A) Describe the record, including its filing date, or ~~[attach]~~ have attached a copy of it to the articles of correction;
  - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the certification or signing was defective; and
  - (C) ~~[Corrects]~~ Correct the incorrect statement or defective certification or signing; and
- (2) By delivering the articles of correction to the director for filing.”

SECTION 106. Section 428-210, Hawaii Revised Statutes, is amended to read as follows:

**“§428-210 [Filing of annual] Annual report.** (a) Each limited liability company and each foreign limited liability company authorized to transact business in this State shall deliver to the director for filing an annual report that sets forth:

- (1) The name of the company and the state or country under whose law it is organized;
- (2) The mailing address of the company’s principal office, the street address of its [designated] registered office in this State, and the name [and street address] of its registered agent [for service of process in this State, provided that if no street address is available the rural post office number or post office box designated or made available by the United States Postal Service;] at its registered office in the State; and

- ~~[(3) The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and~~
- (4) (3) Whether the company is manager-managed, and:
- (A) If so, the name and address of each manager, and the number of members; or
- (B) If not, the name and address of each member.
- ~~[(b) The information in an annual report shall be current as of December 31 of the year preceding the year of filing.~~
- ~~(c) The first annual report shall be delivered to the director by June 30 of the year following the calendar year in which a limited liability company was organized or a foreign limited liability company was authorized to transact business. Subsequent annual reports shall be delivered to the director by June 30 of the following calendar year.~~
- ~~(d)] (b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).~~
- ~~(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.~~
- ~~(d) Effective January 1, 2003, for domestic or foreign limited liability companies whose date of organization or registration in this State falls between:~~
- ~~(1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the company's affairs as of January 1 of the year when filed;~~
- ~~(2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the company's affairs as of April 1 of the year when filed;~~
- ~~(3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the company's affairs as of July 1 of the year when filed; and~~
- ~~(4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the company's affairs as of October 1 of the year when filed;~~
- ~~provided that if a domestic or foreign limited liability company is organized in the same year in which the annual report is due, the domestic or foreign limited liability company shall not be required to file an annual report for that year. Thereafter, the domestic or foreign limited liability company shall comply with the requirements of this section.~~
- ~~(e) If an annual report does not contain the information required in subsection (a), the director shall return the report for correction. If the report is corrected to contain the information required in subsection (a) and delivered to the director within thirty days after the date on which it was mailed to the limited liability company by the director, the report shall be considered to be timely filed."~~

SECTION 107. Section 428-904, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A plan of merger shall be approved:

- (1) In the case of a limited liability company that is a party to the merger, unless otherwise provided in the operating agreement, by the members representing the percentage of ownership specified in the operating agreement, but not fewer than the members holding a majority of the ownership, or if provision is not made in the operating agreement, by all the members;



- (2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
- (3) In the case of a corporation that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the corporation is organized;
- (4) In the case of a domestic limited partnership that is a party to the merger, unless otherwise provided in the partnership agreement, by all of the partners;
- (5) In the case of a foreign limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign limited partnership is organized;
- (6) In the case of a domestic general partnership that is a party to the merger, unless otherwise provided in the partnership agreement, by the vote of all partners; and
- (7) In the case of a foreign general partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership is organized.”

SECTION 108. Section 428-1002, Hawaii Revised Statutes, is amended to read as follows:

**“§428-1002 Application for certificate of authority.** (a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:

- (1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section 428-1005;
- (2) The name of the state or country under whose law it is organized;
- (3) ~~[The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service, and a]~~ A representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at this principal office until cancellation, in accordance with section 428-1007, of the foreign limited liability company’s authority to transact business in this State;
- (4) The ~~[street]~~ mailing address of its initial principal office, the street address of its initial [designated] registered office in this State ~~[or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;~~
- (5) ~~The], and the name [and street address] of its initial registered agent [for service of process] at its initial registered office in this State;~~
- ~~[(6)]~~ (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- ~~[(7)]~~ (6) Whether the company is manager-managed, and:
  - (A) If so, the name and address of each manager; or
  - (B) If not, the name and address of each member;
- ~~[(8)]~~ (7) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and

[9)] (8) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state or country under whose law it is organized, which certificate shall be dated not earlier than ~~[thirty]~~ sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath [of] by the translator shall accompany the certificate.”

SECTION 109. Section 428-1006, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director may not revoke a certificate of authority of a foreign limited liability company unless the director sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to its last known address appearing in the director’s records. The notice shall identify the cause for the revocation of the certificate of authority. If the foreign limited liability company does not cure its failure by the date specified in the notice of revocation, the director may issue a certificate of revocation ~~[in duplicate, file one of the certificates]~~ that shall be filed in the office of the director [and mail the other certificate addressed as described in the preceding sentence to the foreign limited liability company]. The authority of the company to transact business in this State shall cease upon the issuance of the certificate of revocation.”

SECTION 110. Section 482-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Before any person may receive a certificate of registration of a print, label, or trademark, the person shall file in the office of the director of commerce and consumer affairs an application for the registration of the print, label, or trademark, with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print, label, or trademark, and describing the goods or manufactured articles for which the print, label, or trademark is used, and stating the manner in which the print, label, or trademark is used. Before any person may receive a certificate of registration of a service mark or trade name, the person shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that the person is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used. The application shall be accompanied by ~~[two]~~ one exact ~~[copies]~~ copy of the print, label, trademark, service mark, or trade name. Upon filing the application, the applicant shall pay to the director a fee of \$50. A special handling fee of \$20 for expediting registration of a trade name, print, label, trademark, or service mark shall be assessed by the department. All special handling fees shall be credited to the compliance resolution fund established under section ~~[§]26-9(o)[§].~~”

SECTION 111. Act 15, Session Laws of Hawaii 2001, section 4, is amended by amending subsection (b) of section 482-2, Hawaii Revised Statutes, to read as follows:

“(b) Before any person may receive a certificate of registration of a print or label, the person shall file in the office of the director an application for the

registration of the print or label, with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print or label, and describing the goods or manufactured articles for which the print or label is used, and stating the manner in which the print or label is used. The application shall be accompanied by ~~[two]~~ one exact ~~[copies]~~ copy of the print, label, or trade name. Upon filing the application, the applicant shall pay to the director a fee of \$50. A special handling fee of \$20 for expediting registration of a trade name, print, or label shall be assessed by the director. All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o)."

SECTION 112. Section 482E-3, Hawaii Revised Statutes, is amended to read as follows:

**"§482E-3 Offering circular.** (a) It is unlawful for any person to sell a franchise in this State unless such person has presented to the prospective franchisee or the franchisee's representative, at least seven days prior to the sale of the franchise, an offering circular containing the following information:

- (1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees.
- (2) The franchisor's principal business address and the name and address of the franchisor's agent in the State authorized to receive process.
- (3) The business form of the franchisor whether corporate, partnership, or otherwise.
- (4) Such other information concerning the identity and business experience of persons affiliated with the franchisor including franchise brokers and selling agents as the director may by rule prescribe.
- (5) A statement whether any person identified in the offering circular, within ten years preceding the date of the offering circular:
  - (A) Has been found guilty of a felony or held liable in a civil action by final judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or
  - (B) Is subject to any currently effective order of the Securities and Exchange Commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment advisor or is subject to any currently effective order of any national security association or national securities exchange (as defined in the Securities and Exchange Act of 1934) suspending or expelling such person from membership of such association or exchange; or
  - (C) Is subject to any currently effective order or ruling of the Federal Trade Commission or is subject to any currently effective order relating to the business activity as a result of an action brought by any public agency or department.

Such statement shall set forth the court, the date of conviction or judgment, any penalty imposed, or damages assessed, or the date, nature, and issue of such order.

- (6) A statement of when, where, and how long the franchisor has:
  - (A) Conducted a business of the type to be operated by the franchisees;
  - (B) Has granted franchises for such business; and
  - (C) Has granted franchises in other lines of business.

- (7) A recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date thereof. The director may describe:
  - (A) Form and content of the financial statements required under this chapter;
  - (B) The circumstances under which consolidated financial statements can be filed; and
  - (C) The circumstances under which financial statements shall be audited by independent, certified public accountants.
- (8) A copy of the typical franchise contract or agreement proposed for use in this State.
- (9) A statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.
- (10) A statement describing a payment of fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.
- (11) A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused, or repurchased at the option of the franchisor.
- (12) A statement of the conditions under which the franchise may be sold, transferred, or assigned.
- (13) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee or subfranchisor is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or the franchisor's designee.
- (14) A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited or required in the goods and services offered by the franchisee.
- (15) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate.
- (16) A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part.
- (17) A copy of any financial statement prepared for presentation to prospective franchisees or other persons together with a statement setting forth the basis for such statements.
- (18) A statement of the number of franchise businesses in each of the following categories which within the three-year period preceding the date of the offering circular have:
  - (A) Been canceled or terminated by either the franchisor or franchisee;
  - (B) Not been renewed by either the franchisor or franchisee;
  - (C) Been reacquired through purchase by the franchisor;
  - (D) Been otherwise reacquired by the franchisor; and
  - (E) Been transferred or sold by the franchisee to persons other than a corporation or other business entity controlled by the transferring or selling franchisee.

- (19) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee.
- (20) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.
- (21) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from (A) the use of the public figure in the name or symbol of the franchise or (B) the endorsement or recommendation of the franchise by the public figure in advertisements.
- (22) Such other information as the director may reasonably require.
- (23) Such other information as the franchisor may wish to present.
- (24) When the person selling the franchise is a subfranchisor, the offering circular shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this subsection.
- (25) List of names and addresses of all franchisees of the franchisor whose franchise businesses are situated in this State.

(b) If any material change occurs in the information contained in the offering circular, the offering circular shall be amended by the franchisor or subfranchisor before further sales of the franchise are made in this State and the amended offering circular shall be presented to a prospective franchisee at least seven days before a sale of a franchise is made to the prospective franchisee. The director may define by rule material changes which require amendment of an offering circular.

(c) There shall be filed with the director a copy of the offering circular required under subsection (a) or the amended offering circular required under subsection (b) at least seven days prior to the sale of a franchise.

(d) Every filing under this section shall expire ~~[two]~~ three months after the end of each franchisor's fiscal year. Applications for renewals shall be made not more than sixty days before the expiration date. An application for renewal shall be accompanied by the most recently amended offering circular required under subsection (b). Any applicant for renewal of a franchise filing who submits the renewal application after the expiration date shall be required to reapply as a new franchisor.

(e) In lieu of an offering circular meeting the requirements set forth in this section, franchises may be sold in this State by means of an offering circular or disclosure statement required by a federal or government agency of another state, or an offering circular or disclosure statement meeting the requirements approved by an association of state regulatory agencies; provided that the director determines that such offering circular or disclosure statement substantially meets the disclosure requirements set forth in this section."

SECTION 113. Section 414D-88, Hawaii Revised Statutes, is repealed.

SECTION 114. Section 414D-108, Hawaii Revised Statutes, is repealed.

SECTION 115. Section 425-165, Hawaii Revised Statutes, is repealed.

SECTION 116. Section 425-166, Hawaii Revised Statutes, is repealed.

SECTION 117. Section 425-170, Hawaii Revised Statutes, is repealed.

SECTION 118. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 119. This Act shall take effect on July 1, 2002; provided that section 111 shall take effect on July 1, 2003.

(Approved May 31, 2002.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 131

S.B. NO. 2757

A Bill for an Act Relating to Amendments to Act 253, Session Laws of Hawaii 2000.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 253, Session Laws of Hawaii 2000, is amended by amending section 107 to read as follows:

“SECTION 107. Section 89C-2, Hawaii Revised Statutes, is amended to read as follows:

**“§89C-2 Adjustments authorized; limitations, restrictions.** Each appropriate authority may make adjustments for their respective excluded employees subject to the following guidelines and limitations:

- (1) The compensation of excluded employees, whose pay is presently limited or fixed by legislative action, or prescribed by a salary commission, shall not be adjusted under this chapter and shall continue to be limited or fixed by the respective legislative body[;] or salary commission;
- (2) The compensation of excluded employees exempt from civil service coverage, whose pay is set at the discretion of the appointing authority, shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;
- (3) Any adjustment made for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76;
- (4) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall be not less than those provided under collective bargaining agreements for employees hired on a comparable basis;
- (5) For excluded employees other than those under paragraph (4), adjustments shall, to the extent practicable, uniformly apply to every excluded employee within a homogeneous grouping, such as, cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions; and
- (6) No adjustment shall be made in benefits provided under chapter 88 unless specifically authorized by that chapter, or with respect to any other matter that the legislature may specifically prohibit or limit by law.”

SECTION 2. Act 253, Session Laws of Hawaii 2000, is amended by amending section 124 to read as follows:

“SECTION 124. This part shall be repealed on June 30, ~~[2003:]~~ 2008.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2002.

(Approved May 31, 2002.)

## ACT 132

S.B. NO. 2774

A Bill for an Act Relating to Environmental Program Financing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that:

- (1) The prevention, control, and abatement of point and nonpoint sources of water pollution of state waters are public purposes;
- (2) The United States Congress, through the enactment of the Water Quality Act of 1987, established a program for state revolving funds to provide financial assistance for eligible projects to prevent, control, and abate point and nonpoint sources of water pollution;
- (3) Coordination of state and federal efforts to protect and improve the quality of state waters should be encouraged;
- (4) The protection and improvement of the quality of state waters by the prevention, control, and abatement of point and nonpoint sources of pollution can be encouraged, initiated, or financed with loans and other financial assistance; and
- (5) It is a public purpose for the State to protect and improve the quality of state waters by providing loans and other financial assistance for water pollution prevention, control, and abatement projects, including projects by counties, state agencies, and private landowners and individuals concerning nonpoint sources of pollution, which include without limit polluted runoff from communities, construction sites, agricultural and other sources, and cesspool and septic tank seepage, leaks, and runoff.

SECTION 2. Section 340E-36, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Moneys in the drinking water fund may be used only:

- (1) To provide, make, and condition loans;
- (2) To buy or refinance debt obligations of a municipality, as defined by the Federal Act, at or below market interest rates if the debt obligation is incurred after July 1, 1993;
- (3) To guarantee or purchase or provide insurance for a public water system obligation if such action would improve credit market access or reduce interest rates applicable to the obligation;
- (4) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the drinking water fund; ~~[and]~~
- (5) To earn interest on the amounts deposited into the drinking water fund~~[-];~~ and

- (6) To provide interest rate subsidies by depositing revolving fund moneys into interest bearing accounts in participating financial institutions that issue loans for the implementation of eligible projects under section 340E-35.”

SECTION 3. Section 342D-80, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:  
 ““Eligible party” means a county, state agency, or private person.”
2. By amending the definition of “corpus allocation” to read:  
 ““Corpus allocation” means the amount of moneys in the revolving fund ~~[which] that~~ is allocated by the director to provide earnings to reduce ~~[a county or state agency’s]~~ an eligible party’s total financing costs for one or more eligible projects.”

SECTION 4. Section 342D-81, Hawaii Revised Statutes, is amended to read as follows:

**“§342D-81 Declaration of policy.** The State’s policy is to promote water pollution prevention and control, including the use of recycled water, by financing ~~[county and state agency]~~ eligible projects of eligible parties consistent with applicable federal and state laws. The State intends ~~[such]~~ the financing to occur through a revolving fund loan program that makes loans to ~~[counties and state agencies]~~ eligible parties at or below market rates and a leveraging program that uses revenue bonds and revolving fund loan programs together in a coordinated manner that does not cause the state debt ceiling to be exceeded.”

SECTION 5. Section 342D-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director may:

- (1) Provide financial assistance consistent with this part to any ~~[county or state agency]~~ eligible party for the prevention, control, and abatement of water pollution in the State;
- (2) Enter into any necessary or required agreement and give or make any necessary or required assurance, designation, or certification with or to any person in order to receive payments or to make or provide any financial assistance in conformance with Title 33 United States Code sections 1329, 1330, and 1383 to 1387;
- (3) Enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants;
- (4) Adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans issued through the revolving fund and penalties for default of loan repayments;
- (5) Pledge funds, loans, and accounts or subaccounts in the revolving fund to the payment or security of revenue bonds or loans issued under this part and make such corpus allocations as the director deems appropriate. The pledge shall constitute a lien and security interest on such funds and loans to the extent and with the priority as set forth in the document establishing the pledge, without physical delivery, recording, or other further act;
- (6) Perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part; and



- (7) Direct the creation of one or more separate accounts or subaccounts within the revolving fund and specify any conditions applicable to the transfer of moneys and securities among ~~[such]~~ the accounts and subaccounts.”

SECTION 6. Section 342D-83, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The purpose of the revolving fund is to provide financial assistance to ~~[counties and state agencies]~~ eligible parties for projects or activities to:

- (1) ~~[Plan;]~~ Enable counties and state agencies to plan, design, and construct publicly owned wastewater treatment works in accordance with Title 33 United States Code sections 1381 to 1387;
- (2) ~~[Implement]~~ Enable eligible parties to implement management programs established under Title 33 United States Code section 1329; and
- (3) ~~[Implement]~~ Enable eligible parties to implement conservation and management plans established under Title 33 United States Code section 1330.”

SECTION 7. Section 342D-84, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Moneys in the revolving fund, if consistent with the purpose of the revolving fund stated in section 342D-83(b), may be used to:

- (1) Provide, make, and condition loans;
- (2) Guarantee ~~[county or state agency]~~ eligible party loans and bonds and to purchase or provide bond insurance or other credit enhancement or liquidity support for ~~[county or state agency]~~ eligible party debt service payments ~~[where]~~ when such action would improve credit market access or reduce interest rates;
- (3) Buy or refinance debt obligations of ~~[counties or state agencies]~~ eligible parties at or below market rates, ~~[where such]~~ when the debt obligations were incurred after March 7, 1985;
- (4) Support and pay the reasonable costs of administering the revolving fund, including operation and maintenance of the revolving fund, subject to the limits in Title 33 United States Code section 1383(d)(7) and Title 40 Code of Federal Regulations section 35.3120(g), and to provide a source of revenue or security for such support and payment;
- (5) Pay the principal, interest, and redemption premium, if any, on revenue bonds issued by the director, if the proceeds of ~~[such]~~ revenue bonds will be deposited in the revolving fund; ~~[and]~~
- (6) Provide interest rate subsidies from earnings on corpus allocation to subsidize loans to ~~[counties and state agencies]~~ eligible parties made from the proceeds of the revenue bonds of the department~~[-]; and~~
- (7) Provide interest rate subsidies to eligible parties by depositing revolving fund moneys into interest bearing accounts in participating financial institutions that issue loans for the implementation of eligible projects under section 342D-83(b).”

SECTION 8. Section 342D-85, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§342D-85**~~[H]~~ **Revolving fund; deposits.** The following may be deposited into the revolving fund:

- (1) Federal capitalization grant funds and other federal grants, loans, or appropriations;

- (2) Appropriations by the legislature to the revolving fund;
- (3) Payments of principal and interest and other amounts made by ~~[counties and state agencies]~~ eligible parties pursuant to loans or other agreements entered into with the director pursuant to this part; provided that if ~~[such]~~ the loans were financed by proceeds of revenue bonds of the director, the deposit of ~~[such]~~ the payments into the revolving fund shall be subject to the rights of the holders of the bonds to receive ~~[such]~~ the moneys;
- (4) Fees for loans and other items under section 342D-86;
- (5) Proceeds of revenue bonds issued by the director for the purpose of providing financial assistance to ~~[counties and state agencies;]~~ eligible parties;
- (6) Moneys paid to the revolving fund as a result of court ordered awards of judgments;
- (7) Moneys paid to the revolving fund in court-approved or out-of-court settlements;
- (8) All interest attributable to investment of moneys deposited in the revolving fund; and
- (9) All moneys allotted or directed to the revolving fund from other sources.”

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date. Agency rules shall supercede this Act until the rules are amended, repealed, or replaced.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

## ACT 133

S.B. NO. 2775

A Bill for an Act Making an Emergency Appropriation for the Hawaii Health Systems Corporation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the Constitution of the State of Hawaii.

SECTION 2. Although the Hawaii health systems corporation requested \$12,000,000 in general fund support for the fiscal period beginning July 1, 2001, and ending June 30, 2002, only \$2,000,000 in general funds was appropriated. The program will expend all special funds before the end of the fiscal year to meet its obligation to provide services to members of the general public who need hospital-based services. A critical funding emergency exists. Some moneys have been advanced by the State to maintain essential services. This emergency appropriation request is necessary to ensure that the Hawaii health systems corporation can repay

the State for moneys advanced and to pay for mandated and rural healthcare services for the current fiscal year.

The purpose of this Act is to appropriate \$5,000,000 in general funds for fiscal year 2001-2002 to repay funds advanced by the State and to pay for mandated and rural healthcare costs.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2001-2002 to repay the State for moneys advanced and to pay for mandated and rural healthcare services for fiscal year 2001-2002.

The sum appropriated shall be expended by the Hawaii health systems corporation for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

**ACT 134**

H.B. NO. 2817

A Bill for an Act Relating to the Hawaii Rules of Evidence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 626-1, Hawaii Revised Statutes, is amended by amending subsection (d) of rule 504 to read as follows:

“(d) Exceptions.

- (1) Proceedings for hospitalization. There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for mental illness or substance abuse, or in proceedings for the discharge or release of a patient previously hospitalized for mental illness or substance abuse.
- (2) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a patient, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.
- (3) Condition an element of claim or defense. There is no privilege under this rule as to a communication relevant to the physical, mental, or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of the patient’s claim or defense or, after the patient’s death, in any proceeding in which any party relies upon the condition as an element of the party’s claim or defense.
- (4) Proceedings against physician. There is no privilege under this rule in any administrative or judicial proceeding in which the competency, practitioner’s license, or practice of the physician is at issue, provided that the identifying data of the patients whose records are admitted into evidence shall be kept confidential unless waived by the patient. The administrative agency, board, or commission may close the proceeding to the public to protect the confidentiality of the patient.
- (5) Furtherance of crime or tort. There is no privilege under this rule if the services of the physician were sought, obtained, or used to enable or aid

anyone to commit or plan to commit what the patient knew or reasonably should have known to be a crime or tort.

- (6) Prevention of crime or tort. There is no privilege under this rule as to a communication reflecting the patient's intent to commit a criminal or tortious act that the physician reasonably believes is likely to result in death or substantial bodily harm."

SECTION 2. Section 626-1, Hawaii Revised Statutes, is amended by amending rule 504.1 to read as follows:

**"Rule 504.1 Psychologist-client privilege.** (a) Definitions. As used in this rule:

- (1) A "client" is a person who consults or is examined or interviewed by a psychologist.
- (2) A "psychologist" is a person [~~licensed,~~] authorized, or reasonably believed by the client to be [~~licensed,~~] authorized, [~~to practice psychology under chapter 465, while engaged in interviewing, counseling, or psychotherapy with respect to behavioral problems,~~] to engage in the diagnosis or treatment of a mental or emotional condition, including substance addiction or abuse.
- (3) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the client in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the [~~counseling or psychotherapy~~] diagnosis or treatment of the client's mental or emotional condition under the direction of the psychologist, including members of the client's family.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of [~~counseling or psychotherapy with respect to behavioral problems,~~] diagnosis or treatment of the client's mental or emotional condition, including substance addiction or abuse, among [~~oneself,~~] the client, the client's psychologist, and persons who are participating in the [~~counseling or psychotherapy~~] diagnosis or treatment under the direction of the psychologist, including members of the client's family.

(c) Who may claim the privilege. The privilege may be claimed by the client, the client's guardian or conservator, or the personal representative of a deceased client. The person who was the psychologist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) Exceptions.

- (1) Proceedings for hospitalization. There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the client for mental illness or substance abuse, or in proceedings for the discharge or release of a client previously hospitalized for mental illness or substance abuse.
- (2) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a client, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.
- (3) Condition an element of claim or defense. There is no privilege under this rule as to a communication relevant to the physical, mental, or emotional condition of the client in any proceeding in which the client relies upon the condition as an element of the client's claim or defense

or, after the client's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

- (4) Proceedings against psychologist. There is no privilege under this rule in any administrative or judicial proceeding in which the competency, practitioner's license, or practice of the psychologist is at issue, provided that the identifying data of the clients whose records are admitted into evidence shall be kept confidential unless waived by the client. The administrative agency, board, or commission may close the proceeding to the public to protect the confidentiality of the client.
- (5) Furtherance of crime or tort. There is no privilege under this rule if the services of the psychologist were sought, obtained, or used to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or tort.
- (6) Prevention of crime or tort. There is no privilege under this rule as to a communication reflecting the client's intent to commit a criminal or tortious act that the psychologist reasonably believes is likely to result in death or substantial bodily harm."

SECTION 3. Section 626-1, Hawaii Revised Statutes, is amended by amending rule 801 to read as follows:

**"Rule 801 Definitions.** The following definitions apply under this article:

[(4)] "Statement" is [(A)] an oral [~~or written~~] assertion, an assertion in a writing, or [(B)-a] nonverbal conduct of a person, if it is intended by the person as an assertion.

[(2)] "Declarant" is a person who makes a statement.

[(3)] "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

SECTION 4. Section 626-1, Hawaii Revised Statutes, is amended by amending rule 803 to read as follows:

**"Rule 803 Hearsay exceptions; availability of declarant immaterial.** The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Admissions.

- (1) Admission by party-opponent. A statement that is offered against a party and is (A) the party's own statement, in either the party's individual or a representative capacity, or (B) a statement of which the party has manifested the party's adoption or belief in its truth.
- (2) Vicarious admissions. A statement that is offered against a party and was uttered by (A) a person authorized by the party to make such a statement, (B) the party's agent or servant concerning a matter within the scope of the agent's or servant's agency or employment, made during the existence of the relationship, or (C) a co-conspirator of the party during the course and in furtherance of the conspiracy.
- (3) Admission by deceased in wrongful death action. A statement by the deceased, offered against the plaintiff in an action for the wrongful death of that deceased.
- (4) Admission by predecessor in interest. When a right, title, or interest in any property or claim asserted by a party to a civil action requires a determination that a right, title, or interest exists or existed in the declarant, evidence of a statement made by the declarant during the

- time the party now claims the declarant was the holder of the right, title, or interest is as admissible against the party as it would be if offered against the declarant in an action involving that right, title, or interest.
- (5) Admission by predecessor in litigation. When the liability, obligation, or duty of a party to a civil action is based in whole or in part upon the liability, obligation, or duty of the declarant, or when the claim or right asserted by a party to a civil action is barred or diminished by a breach of duty by the declarant, evidence of a statement made by the declarant is as admissible against the party as it would be if offered against the declarant in an action involving that liability, obligation, duty, or breach of duty.
  - (b) Other exceptions.
    - (1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.
    - (2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
    - (3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
    - (4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
    - (5) Reserved.
    - (6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made in the course of a regularly conducted activity, at or near the time of the acts, events, conditions, opinions, or diagnoses, as shown by the testimony of the custodian or other qualified witness, or by certification that complies with rule 902(11) or a statute permitting certification, unless the sources of information or other circumstances indicate lack of trustworthiness.
    - (7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.
    - (8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil proceedings and against the government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by

- law, unless the sources of information or other circumstances indicate lack of trustworthiness.
- (9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.
  - (10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.
  - (11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.
  - (12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.
  - (13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.
  - (14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.
  - (15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless the circumstances indicate lack of trustworthiness.
  - (16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.
  - (17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.
  - (18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.
  - (19) Reputation concerning personal or family history. Reputation among members of the person's family by blood, adoption, or marriage, or among the person's associates, or in the community, concerning a

person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of the person's personal or family history.

- (20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.
- (21) Reputation as to character. In proving character or a trait of character under rules 404 and 405, reputation of a person's character among the person's associates or in the community.
- (22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.
- (23) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.
- (24) Other exceptions. A statement not specifically covered by any of the exceptions in this paragraph (b) but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (B) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant."

SECTION 5. Section 626-1, Hawaii Revised Statutes, is amended by amending subsection (b) of rule 804 to read as follows:

"(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

- (1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, at the instance of or against a party with an opportunity to develop the testimony by direct, cross, or redirect examination, with motive and interest similar to those of the party against whom now offered;
- (2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death;
- (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal



- liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement;
- (4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared;
  - (5) Statement of recent perception. A statement, not in response to the instigation of a person engaged in investigating, litigating, or settling a claim, which narrates, describes, or explains an event or condition recently perceived by the declarant, made in good faith, not in contemplation of pending or anticipated litigation in which the declarant was interested, and while the declarant's recollection was clear;
  - (6) Statement by child. A statement made by a child when under the age of sixteen, describing any act of sexual contact, sexual penetration, or physical violence performed with or against the child by another, if the court determines that the time, content, and circumstances of the statement provide strong assurances of trustworthiness with regard to appropriate factors that include but are not limited to: (A) age and mental condition of the declarant; (B) spontaneity and absence of suggestion; (C) appropriateness of the language and terminology of the statement, given the child's age; (D) lack of motive to fabricate; (E) time interval between the event and the statement, and the reasons therefor; and (F) whether or not the statement was recorded, and the time, circumstances, and method of the recording. If admitted, the statement may be read or, in the event of a recorded statement, broadcast into evidence but may not itself be received as an exhibit unless offered by an adverse party;
  - (7) Forfeiture by wrongdoing. A statement offered against a party that has procured the unavailability of the declarant as a witness;
  - [(7)] (8) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (B) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.'

SECTION 6. Section 626-1, Hawaii Revised Statutes, is amended by amending rule 902 to read as follows:

**“Rule 902 Self-authentication.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

- (1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.
- (2) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) [hereof], having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
- (3) Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.
- (4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) [~~of this rule~~] or complying with any statute or rule prescribed by the supreme court.
- (5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.
- (6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.
- (7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
- (8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.
- (9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.
- (10) Presumptions under statutes. Any signature, document, or other matter declared by statute to be presumptively or prima facie genuine or authentic.

- (11) Certified records of regularly conducted activity. The original or a duplicate of a domestic or foreign record of regularly conducted activity that would be admissible under rule 803(b)(6), if accompanied by a written declaration of its custodian or other qualified person, certifying that the record was:
- (A) Made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
  - (B) Kept in the course of the regularly conducted activity; and
  - (C) Made by the regularly conducted activity as a regular practice.
- The declaration shall be signed in a manner that, if falsely made, would subject the maker to a criminal penalty under the laws of the state or country where the declaration is signed. A party intending to offer a record into evidence under this paragraph shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of that intention to all adverse parties, and shall make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon approval.

(Approved June 6, 2002.)

## ACT 135

H.B. NO. 2854

A Bill for an Act Relating to Accountancy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 466-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~[H]§466-5.5~~ Educational requirements for ~~[examination and] licensure effective December 31, 2000.~~ (a)<sup>1</sup> Effective December 31, 2000, an applicant for ~~[the Uniform Certified Public Accountant Examination]~~ licensure shall have at least one-hundred-fifty semester hours of college education. Within the one-hundred-fifty semester hours, the applicant shall have:**

- (1) A baccalaureate or higher degree conferred by a college or university acceptable to the board; and
- (2) An accounting concentration or its equivalent as specified in the rules of the board;

**~~[except that examination applicants holding conditional credit for the Uniform Certified Public Accountant Examination before December 31, 2000, may continue to meet the educational requirements provided in section 466-5(f) until such time as the conditional credit expires.~~**

**~~(b) Effective December 31, 2000, an applicant shall meet the educational requirements of subsection (a) to obtain a certified public accountant license.]~~ except that applicants for licensure who have successfully completed the Uniform Certified Public Accountant Examination before December 31, 2000, or held conditional**

credit before December 31, 2000, and subsequently completed the examination before the conditional credit expired, may continue to meet the educational requirements of section 466-5(b).''

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 6, 2002.)

**Note**

1. No subsection (b).

**ACT 136**

S.B. NO. 2067

A Bill for an Act Relating to Higher Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 333, Session Laws of Hawaii 1990, established the Hawaii opportunity program in education (HOPE) special fund for scholarships for financially needy students with priority given to students from ethnic groups that are underrepresented in the student population of the University of Hawaii. Only interest from the fund would be used for HOPE scholarships, stipends, and mandatory fees.

Act 182, Session Laws of Hawaii 1997, changed the original HOPE special fund program by creating the HOPE endowment special fund with the board of regents, rather than the director of finance, responsible for the management of this fund. No scholarships or tuition waivers for this program have been provided to date. A major problem is that interest available for scholarship support is inadequate because \$5,000,000 from the special fund corpus was deposited to the university student tuition and fees special fund in 1995. None of these funds were used to provide scholarship support or student services programs specifically for financially needy underrepresented students.

The purpose of this Act is to be consistent with the original purpose of HOPE by providing the University of Hawaii resources to support student diversity and to recruit and retain financially needy students with priority given to students from underrepresented ethnic groups.

This Act also terminates the HOPE endowment special fund and deposits the balance of approximately \$1,000,000, as of December 2001, to the credit of the university student tuition and fees special fund to be used to fund programs to recruit and retain students from underrepresented ethnic groups and to fund student diversity programs.

The university is encouraged to seek private funding for HOPE scholarship support. The university shall continue to provide annual reports to the legislature on tuition waivers and scholarship support to financially needy students from ethnic groups that are underrepresented in the student population of the university through HOPE.

SECTION 2. Section 304-8.95, Hawaii Revised Statutes, is amended to read as follows:

**“§304-8.95 Hawaii opportunity program in education [endowment special fund.** (a) There is created in the treasury of the State, the Hawaii opportunity

program in education (HOPE) endowment special fund. Expenditures from the Hawaii opportunity program in education endowment special fund shall be limited to:

- (1) Providing funds to award scholarships, stipends, and mandatory fees for the University of Hawaii to financially needy students with priority given to students from ethnic groups which are under-represented in the student population of the University of Hawaii; and
- (2) Pay all costs incident to the prudent investment of the principal and income deposited in the endowment special fund.

Appropriations or authorizations from the Hawaii opportunity program in education endowment special fund shall be expended by the board of regents.

(b) The endowment special fund shall be administered by the board of regents, which shall also be responsible for investing the principal and income deposited therein.

(c) Scholarship, stipend, and mandatory fee awards for the University of Hawaii, funded by sums from the Hawaii opportunity program in education endowment special fund, shall be made beginning in the fiscal year 1998, in accordance with rules adopted by the board of regents pursuant to chapter 91. The rules shall include criteria for determining under-representation of particular groups in the student population of the university and financial need. Scholarship, stipend, and mandatory fee awards shall be made from appropriations or authorizations from the Hawaii opportunity program in education endowment special fund, and only earnings from the investment of principal and income on deposit in the endowment special fund received after June 30, 1997, shall be available for such appropriations or authorizations. The total sum appropriated or authorized for scholarship, stipend, and mandatory fee awards in any fiscal year shall not exceed ten per cent of the amount deposited in the endowment special fund on June 30, 1997, and in no event shall the total sum appropriated or authorized out of the special fund for scholarship awards in any fiscal year cause the amount deposited in the Hawaii opportunity program in education endowment special fund to be less than the amount on deposit in the special fund on June 30, 1997.

(d) Notwithstanding any law to the contrary, revenues derived from private organizations and individuals may be received by the Hawaii opportunity program in education endowment special fund and may be managed and invested pursuant to this section]. There is established the Hawaii opportunity program in education (HOPE) to be placed within the University of Hawaii for administrative purposes to support financially needy students with priority given to students from ethnic groups that are underrepresented in the student population of the University of Hawaii. The University of Hawaii is encouraged to provide tuition waivers and seek private donations for scholarship support for HOPE students.”

SECTION 3. Section 304-16.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board of regents, or its designated representatives, is authorized to grant, modify, or suspend tuition waivers. The board of regents shall provide a report and make recommendations as appropriate to the legislature on all tuition waivers no later than twenty days prior to the convening of each regular session. This report shall include but not be limited to the number of tuition waivers and scholarships, stipends, and mandatory fees granted to financially needy students from ethnic groups that are under-represented in the student population of the University of Hawaii through the Hawaii opportunity program in education [endowment special fund].”

SECTION 4. The University of Hawaii shall transfer to the credit of the University of Hawaii tuition and fees special fund on July 1, 2002, all unexpended or unencumbered balances remaining in the HOPE endowment special fund scheduled for repeal on the effective date of this Act. The funds transferred shall be used to support university programs to recruit and retain financially needy students with priority given to students from ethnic groups underrepresented in the student population of the University of Hawaii and to support student diversity programs.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2002.

(Approved June 6, 2002.)

## ACT 137

S.B. NO. 2289

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514A- Telecommunications equipment.** (a) Notwithstanding any other provisions to the contrary in this chapter, in the declaration of any project, or in the by-laws of any association:

- (1) The board of directors of an association shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the apartment or apartments for the use of which the limited common element is reserved; and
- (2) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each apartment or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section 514A-12; provided that no such installation shall directly affect any nonconsenting apartment owner.

(b) Notwithstanding any other provision to the contrary in this chapter, in the declaration of any project or in the by-laws of any association:

- (1) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and
- (2) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each

apartment or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section 514A-12.

(c) As used in this section:

“Directly affect” means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect an apartment owner in a manner not common to the apartment owners as a whole.

“Television signal distribution” and “telecommunications equipment” shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date. This Act does not affect the rights and duties arising from contracts.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 6, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 138**

S.B. NO. 2422

A Bill for an Act Relating to Motor Vehicle Inspections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-26, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The following vehicles shall be certified as provided in subsection (e) once every ~~[six months:]~~ year:

[(1)] **Ambulances;**

(2) (1) Trucks, truck-tractors, semitrailers, and pole trailers having a gross vehicle weight rating of more than 10,000 pounds;

[(3)] (2) Buses;

[(4)] (3) Rental or U-drive motor vehicles ~~[one year]~~ two years of age or older; and

[(5)] (4) Taxicabs.

Ambulances shall be certified as provided in subsection (e) once every six months.

(b) All other vehicles, including motorcycles, trailers, semitrailers, and pole trailers having a gross vehicle weight rating of 10,000 pounds or less, and antique motor vehicles as defined in section 249-1, except those in subsections (c) and (d), shall be certified as provided in subsection (e) every twelve months~~[-];~~ provided that any vehicle to which this subsection applies shall not require inspection within two years of the date on which the vehicle was first sold.”

SECTION 2. Section 286-209, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Motor carrier vehicles including but not limited to trucks, truck-tractors, semitrailers, trailers, or pole trailers having a gross vehicle weight rating of more

than 10,000 pounds, and motor carrier vehicles having a gross vehicle weight rating of 10,000 pounds or less which transport passengers in the furtherance of a commercial enterprise, including car rental transport vehicles shall be inspected and certified once every ~~[six months.]~~ twelve months.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2003.

(Approved June 6, 2002.)

## ACT 139

H.B. NO. 870

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 171-132, Hawaii Revised Statutes, is amended to read as follows:

**“~~[H]§171-132[H]~~ Designation of industrial park.** A contiguous area of not less than five acres of public lands which is classified or otherwise determined by the board as suitable and economically feasible for industrial use may be designated as an industrial park:

- (1) By resolution adopted by the board of land and natural resources, and approved by the legislature by concurrent resolution; or
- (2) By law.”

SECTION 2. Section 171-135, Hawaii Revised Statutes, is amended to read as follows:

**“§171-135 Joint venture or development agreement.** (a) An industrial park may be developed under section 171-134 by the department in partnership or under a development agreement with a federal agency, county, or private party subject to a partnership or development agreement executed by the chairperson of the board~~[-]~~; provided that if the industrial park is to be developed in partnership or under a development agreement with a private party, the private party shall be selected in accordance with section 103D-302 or 103D-303. At a minimum, the agreement shall provide for:

- (1) A determination by the board that the partnership agreement or the development agreement is for a public purpose;
- (2) Long-term assurance that the public land within the industrial park will be utilized for industrial uses;
- (3) Final approval by the board of the plans and specifications for the industrial park;
- (4) Exclusive authority by the board to issue leases or master leases within the industrial park; and
- (5) Conditions to ensure a public benefit from any state funds expended for the industrial park.

(b) Notwithstanding any other provision of law to the contrary, a partnership or development agreement entered into pursuant to subsection (a) may provide for:



- (1) The board to issue master leases within an industrial park by negotiation, without regard to the limitations provided in sections 171-16(c) and 171-59(a), to the entity that developed the industrial park or the nominee or nominees of the entity that developed the industrial park; and
- (2) A master lease with terms and conditions upon which the master lessee may issue tenant subleases within the industrial park without the consent of the board."

SECTION 3. Section 171-141, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Notwithstanding any other provision of law to the contrary:
- (1) A parcel of the public lands within an industrial park which had been occupied and used under a permit on the day before the date of designation of that industrial park shall be an economic unit in that industrial park. For the purpose of this section:
    - (A) “Date of designation” means the effective date of the resolution or law which designates an industrial park; and
    - (B) “Eligible economic unit” means an economic unit referred to under this paragraph;
  - (2) A person with a permit to use an eligible economic unit on the day before the date of designation of that industrial park shall be given first preference to lease that unit after the date of designation if the person is an eligible lessee. For the purpose of this section, an “eligible permittee” means a person referred to under this paragraph;
  - (3) The board shall issue a lease to an eligible permittee for an eligible economic unit under mutually agreeable terms, conditions, and lease rent. The lease shall be issued through negotiations, without regard to the limitations set forth in section 171-16(c) and section 171-59(a). The terms, conditions, and rent under the lease shall be in conformance with this chapter, and the board shall include lease covenants in each lease for the placement and construction of improvements in accordance with minimum standards established by applicable county building codes;
  - (4) The board shall negotiate in good faith with each eligible permittee. If the board and eligible permittee cannot agree to a lease within one hundred eighty days from the date of designation, the board shall have no further obligation to negotiate with or issue a lease to the eligible permittee and may issue a lease for the eligible economic unit to another person after the one hundred eighty-day period; provided that any lease for the eligible economic unit issued subsequent to the termination of the one hundred eighty-day period shall not include terms and conditions which are less restrictive, and a lease rent which is less, than the terms, conditions, and lease rent last offered in writing by the eligible permittee and received by the board; and
  - (5) The board, in lieu of issuing a lease under paragraph (3), may issue a master lease to a corporation whose members or shareholders ~~[are all]~~ shall be either eligible permittees or eligible sublessees of the industrial park, through negotiations~~[:]~~ and without regard to the limitations provided in section 171-16(c) and section 171-59(a). The master lease shall provide for the issuance of subleases to eligible permittees and other sublessees approved by the board, on terms and conditions approved by the board. The terms and conditions of a master lease concerning the authority to sublease shall supersede any contrary term or condition in a development agreement executed prior to the issuance

of the master lease; provided that all other terms and conditions of the development agreement shall be incorporated and made a part of the master lease. All terms, conditions, and rents under the master lease and subleases shall be in conformance with this chapter, and the board shall include lease covenants in the master lease and each sublease for the placement and construction of improvements in accordance with minimum standards established by applicable county building codes. The lessee under the master lease shall assume the responsibility of administering and monitoring permittee compliance with all sublease obligations.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 2002.)

## ACT 140

H.B. NO. 1713

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514A- Association of apartment owners; prior written notice of assessment of the cost of providing information.** No apartment owner who requests legal or other information from the association of apartment owners, the board of directors, the managing agent, or their employees or agents, shall be charged for the cost of providing the information unless the association notifies the apartment owner that it intends to charge the apartment owner for the cost. The association shall notify the apartment owner in writing at least ten days prior to incurring the cost of providing the information, except that no prior notice shall be required to assess the cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the association’s governing documents.

After being notified of the cost of providing the information, the apartment owner may withdraw the request, in writing. An apartment owner who withdraws a request for information shall not be charged for the cost of providing the information.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 2002.)

### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to the requirements of subsection (a), the bylaws shall be consistent with the following provisions:

- (I) At any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including any provision relating to cumulative voting. If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association’s record of ownership; provided that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided in this section, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.
- (2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that [each]:
  - (A) Each one of the particulars set forth in this [section] subsection shall be embodied in the bylaws always; and [provided further that any]
  - (B) Any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer apartment owners’ committee. If submitted by that committee, the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association’s record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within [one hundred twenty] three hundred sixty-five days after mailing[. In the event that] for a proposed bylaw submitted by either the board of directors or a volunteer apartment owners’ committee. If the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer

apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board.

This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting.

- (3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any.
- (4) No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. Any board of directors that intends to use association funds to distribute proxies, including the standard proxy form referred to in paragraph (3), shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:
  - (A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
  - (B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.

- (5) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.
- (6) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.
- (7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association.
- (8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership.
- (9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the

- project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors.
- (10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses.
  - (11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.
  - (12) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of paragraph (10).
  - (13) A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by chapter 667~~[-as that chapter may be amended from time to time]~~.

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval and shall apply to voting ballots that are mailed after this Act's effective date.

(Approved June 7, 2002.)

## ACT 142

H.B. NO. 1716

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-121.5, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§514A-121.5[ ] Mediation.** If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, or involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2, 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, or 514A-84.5, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation; unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If an owner or the board refuses to participate in the mediation of a particular dispute, a

court may take this refusal into consideration when awarding expenses, costs, and attorney's fees in accordance with section 514A-94."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take upon its approval.

(Approved June 7, 2002.)

## ACT 143

H.B. NO. 2192

A Bill for an Act Relating to the Hawaii Tourism Authority.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 23, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§23- Hawaii tourism authority; audit.** (a) The auditor shall conduct at least every five years a management and financial audit of all contracts or agreements awarded by the Hawaii tourism authority to a major contractor to determine if the authority and its major contractors are in compliance with all relevant programmatic and financial requirements. The first audit shall be conducted within one year of the effective date of this Act. These audits shall include but not be limited to a review of the following:

- (1) The responsibilities, services, and activities of all major contractors;
- (2) The propriety of expenditures;
- (3) Compliance by all major contractors with any laws and rules that may be in effect;
- (4) The management and oversight of all major contractors by the authority; and
- (5) Any additional audit issues that the auditor deems appropriate.

(b) The authority and any private companies or agencies receiving state funds shall fully cooperate with and provide assistance to the auditor as needed with respect to its audit, and shall respond promptly to the auditor's requests in conducting this audit, including providing for records and other information requested in the course of the audit.

(c) The authority shall compensate the auditor for expenditures incurred by the auditor in conducting the management and financial audit.

(d) The auditor shall submit its findings and recommendations to the legislature no later than twenty days before the convening of the regular session following the year in which the audit is conducted.

(e) For purposes of this section, "major contractor" means any contractor to whom a contract or agreement has been awarded that is valued in excess of \$15,000,000."

SECTION 2. Section 201B-2, Hawaii Revised Statutes, is amended to read as follows:

**"[[§201B-2]] Hawaii tourism authority; establishment; board; staff.**

(a) There is established the Hawaii tourism authority, which shall be a body corporate and a public instrumentality of the State, for the purpose of implementing

this chapter. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes only.

(b) The authority shall be headed by a policy-making board of directors which consists of ~~[ten]~~ twelve public, voting members, ~~[one public, nonvoting member;]~~ one ex officio voting member, and ~~[one]~~ two ex officio nonvoting ~~[member;]~~ members; provided that:

- (1) ~~[Ten]~~ Twelve public, voting members shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
- (2) The ~~[ten]~~ twelve public, voting members shall be composed of at least one representative each from the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui; the remaining public members shall be appointed at-large;
- (3) Of the ~~[ten]~~ twelve public, voting members, ~~[two]~~ three shall be appointed by the governor from a list of three names ~~[nominated]~~ submitted for each appointment by the president of the senate, and ~~[two]~~ three shall be appointed by the governor from a list of three names ~~[nominated]~~ submitted for each appointment by the speaker of the house of representatives; provided that if fewer than three names are submitted for each appointment, the governor may disregard the list;
- (4) At least six of the ~~[ten]~~ twelve public, voting members shall have knowledge, experience, and expertise in the area of visitor industry management, marketing, ~~[and]~~ promotion[;], transportation, retail, entertainment, or visitor attractions, and at least one shall have knowledge, experience, and expertise in the area of Hawaiian cultural practices; provided that no more than three members shall represent, be employed by, or be under contract to any sector of the industry represented on the board;
- (5) The governor shall make appointments to ensure the fulfillment of all requirements; provided that any appointments made after the effective date of this Act, shall be made to fulfill the requirements in place when the appointments are made;
- (6) The director of business, economic development, and tourism, or a designated representative, shall be an ex officio voting member;
- (7) The director of transportation, or a designated representative, shall be an ex officio nonvoting member; and
- (8) ~~[The governor shall appoint a public, nonvoting member.]~~ The chairperson of the board of land and natural resources, or a designated representative, shall be an ex officio nonvoting member.

(c) The public members shall be appointed by the governor for terms of four years[; except that the terms of the members first appointed shall be for two and four years, respectively, as designated by the governor at the time of appointment]. Each public member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall be applicable insofar as it relates to the number of terms and consecutive number of years a member may serve on the board.

(d) The board shall elect a chairperson from among the voting members. The director of business, economic development, and tourism or the designated representative shall not be chairperson of the board.

(e) ~~[Six]~~ Seven voting members shall constitute a quorum~~[, whose]~~ and a minimum of seven affirmative ~~[vote]~~ votes shall be necessary for all actions by the authority. The members shall serve without compensation, but shall be reimbursed for expenses, including traveling expenses, necessary for the performance of their duties.

(f) The board shall appoint an executive director, exempt from chapters 76 and [77,] 88, who shall oversee the authority staff~~[-and shall be compensated at a salary level set by the governor.];~~ provided that the compensation package, including salary, shall not exceed fifteen per cent of the 3.5 per cent authorized for administrative expenses under section 201B-11(c); and provided further that the compensation package shall not include private sector moneys or other contributions. The board shall set the executive director's duties, responsibilities, holidays, vacations, leaves, hours of work, and working conditions. It may grant such other benefits as it deems necessary.

(g) The authority may employ persons not subject to chapters 76[77,] and 78 to perform and execute the functions of the authority."

SECTION 3. Section 201B-3, Hawaii Revised Statutes, is amended by amending subsection (a)<sup>1</sup> to read as follows:

"(a) Except as otherwise limited by this chapter, the ~~[board]~~ authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter, provided that the authority may enter into contracts and agreements for a period of up to five years[;], subject to the availability of funds;
- (4) Make and alter bylaws for its organization and internal management;
- (5) ~~[Adopt]~~ Unless otherwise provided in this chapter, adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
- (6) Through its executive director represent the authority in communications with the governor and with the legislature;
- (7) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76[77,] and 78;
- (8) Through its executive director purchase supplies, equipment, or furniture;
- (9) Through its executive director allocate the space or spaces which are to be occupied by the authority and appropriate staff;
- (10) Engage the services of qualified persons to implement the State's tourism marketing plan or portions thereof as determined by the ~~[board;]~~ authority;
- (11) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (12) Procure insurance against any loss in connection with its property and other assets and operations in such amounts from such insurers as it deems desirable;
- (13) Contract for~~[-and]~~ or accept revenues, compensation, proceeds, and gifts or grants in any form from any public agency or any other source;
- (14) Create a vision and develop a long range plan for tourism in Hawaii~~[-including product development, infrastructure, and diversification issues];~~
- (15) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State~~[-and its natural resources infrastructure; provided that the authority shall support the efforts of other state and county departments or agencies to manage, improve,~~



- and protect Hawaii's natural environment and areas frequented by visitors;
- (16) Develop and implement the state tourism strategic marketing plan, which shall be updated every three years, to promote and market the State as a desirable leisure and business visitor destination;
  - (17) Have a permanent, strong focus on marketing and promotion;
  - (18) Conduct market development-related research as necessary;
  - (19) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
  - (20) Work to eliminate or reduce barriers to travel in order to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
  - (21) Market and promote sports-related activities and events;
  - (22) Coordinate the development of new products with the counties and other public sectors and private sectors, including the development of sports, culture, health, education, business, and eco-tourism;
  - (23) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
  - (24) Encourage the development of tourism educational, training, and career counseling programs; and
  - (25) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary."

SECTION 4. Section 201B-7, Hawaii Revised Statutes, is amended to read as follows:

**"§201B-7 Tourism-related activities.** (a) The authority may enter into contracts and agreements that include the following:

- (1) Tourism promotion, marketing, and development;
- (2) Market development-related research;
- (3) Product development and diversification issues[;] focused on visitors;
- (4) Promotion, development, and coordination of sports-related activities and events;
- (5) Promotion of Hawaii, through a coordinated statewide effort, as a place to do business, including high technology business[;], and as a business destination;
- (6) Reduction of barriers to travel; and
- ~~[(7) Tourism public information and educational programs;~~
- ~~(8) Programs to monitor and investigate complaints about the problems resulting from the tourism industry in the State; and~~
- ~~[(9)]~~ (7) Any and all other activities necessary to carry out the intent of this chapter;

~~provided that for [the purposes of continuity, the Hawaii Visitors and Convention Bureau shall be the designated agency to conduct the marketing and promotion of the State until the end of fiscal year 1998-1999 or until a date specified by the board.] any contract or agreement valued at \$25,000 and over, the authority shall provide notice to the speaker of the house of representatives and the president of the senate on the same day that such notification is given to the governor.~~

(b) The authority may delegate to staff ~~[shall be responsible for]~~ the responsibility for soliciting, awarding, and executing contracts, and monitoring and facilitating any and all functions developed in accordance with subsection (a)."

SECTION 5. Section 201B-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Moneys in the tourism special fund shall be used by the authority for the purposes of this chapter, provided that not more than ~~[three]~~ 3.5 per cent of this amount shall be used for administrative expenses; provided further that of this amount the sum of \$15,000 shall be made available for a protocol fund to be expended at the discretion of the executive director.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

#### Notes

1. Act 38 of this session:
  - (A) Added the subsection (a) designation to section 201B-3;
  - (B) Deleted paragraph (26) of section 201B-3; and
  - (C) Deleted the proviso at the end of section 201B-11(c).
2. Edited pursuant to HRS §23G-16.5.

## ACT 144

H.B. NO. 2315

A Bill for an Act Relating to the Obstruction of Ingress or Egress.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 852-1, Hawaii Revised Statutes, is amended to read as follows:

**“§852-1 Refusal to provide ingress or egress[; penalty].** (a) Whenever ingress to or egress from any public or private place is obstructed by any person or persons in such manner as not to leave a free passageway for persons and vehicles lawfully seeking to enter or leave such place, any ~~[police or other peace officer]~~ law enforcement officer shall direct such person or persons to move so as to provide and maintain a free and unobstructed passageway for persons and vehicles lawfully going into or out of such place. It shall be unlawful for any person to refuse or wilfully fail to move as directed by such officer.

(b) As used in this section, “law enforcement officer” means any public servant, whether employed by the State or county, vested by law with a duty to maintain public order, to make arrests for offenses, or to enforce the criminal laws, whether the duty extends to all offenses or is limited to a specific class of offenses.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 2002.)

A Bill for an Act Relating to the Prevention of the Filing of Frivolous Financing Statements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 507D-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:  
“‘Debtor’ means a person named as the debtor in a financing statement.  
‘Financing statement’ means a record filed under chapter 490:9.”

SECTION 2. Chapter 507D, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“NONCONSENSUAL COMMON LAW LIENS AND FRIVOLOUS FINANCING STATEMENTS”**

SECTION 3. Section 507D-1, Hawaii Revised Statutes, is amended to read as follows:

**“[§507D-1] Findings and purpose.** The legislature finds that there is a problem with the recording at the land court or the bureau of conveyances of invalid instruments which purport to affect the property interests of various persons, including but not limited to government officers and employees. These instruments, which have no basis in fact or law, have a seriously disruptive effect on property interests and title. They appear on title searches and other disclosures based on public records, and are costly and time-consuming to expunge. When they so appear, they may obstruct a property owner’s ability to transfer title or obtain title insurance and financing.

The bureau of conveyances does not have the discretionary authority to refuse to record instruments so long as those instruments comply with certain minimal format requirements. It would be inefficient and require substantial governmental expenditures to have the bureau of conveyances determine the legal sufficiency of instruments submitted for recordation. The land court’s registrar screens instruments submitted for recordation, but has no mechanism to prevent the filing of frivolous lien claims during the pendency of litigation. Similarly, the public is in need of a mechanism to address the filing of frivolous financing statements.

The legislature finds that it is necessary and in the best interests of the State and private parties to legislatively provide a means to relieve this problem, and to limit the circumstances in which nonconsensual common law liens shall be recognized in this State[-] and to remedy the filing of frivolous financing statements.”

SECTION 4. Section 507D-4, Hawaii Revised Statutes, is amended to read as follows:

**“§507D-4 Contesting validity of recorded instruments; injunctions.** (a) Any party in interest in real or personal property which is subject to a claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition in the appropriate circuit court to contest the validity of that purported lien and to enjoin the lien claimant from making further filings with the registrar. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner’s attorney setting forth a concise statement of the facts upon which the petition is based. The procedure for obtaining

injunctions and temporary restraining orders shall apply in cases brought under this section or section 507D-7(b).

(b) A debtor who believes the filing of a financing statement was unauthorized, may file a request with the registrar to determine the validity of the filing. Each such request shall identify the financing statement by document number and the requester shall be assessed a reasonable processing fee determined by the registrar. Upon the receipt of the request, the registrar shall send a demand to the secured party by certified or registered mail, at the address set forth on the financing statement, that the secured party provide a copy of the security agreement which purportedly authorized the filing of the financing statement to the registrar no later than thirty days following the postmarked date of the registrar's notice. If the registrar does not receive the security agreement within the thirty-day period, the registrar shall issue to the debtor and accept for filing, a notice of unauthorized filing of financing statement. The filing of a notice of unauthorized filing of financing statement shall effectively terminate the unauthorized financing statement.

~~[(b) Subsection]~~ (c) Subsections (a) and (b) shall not apply to any instrument that is recorded by the United States, the State, or any county.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

## ACT 146

H.B. NO. 2454

A Bill for an Act Relating to Enterprise Zones.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that due to the negative economic impact of the terrorist attacks in New York City and Virginia on September 11, 2001, there is a need to amend the hiring requirements for firms enrolled in the Hawaii Enterprise Zones (EZ) partnership. Most participating EZ firms may find it difficult to increase their hiring as required by the EZ program criteria in the near future, and may even be forced to lay off employees. As a result, this Act:

- (1) Allows all firms enrolled in the EZ partnership before September 11, 2001, to use their average number of full-time employees from the beginning of their current fiscal year until August 31, 2001, to determine their qualification for EZ tax benefits for the entirety of their current fiscal year; and
- (2) Allows all firms enrolled in the EZ partnership before September 11, 2001, to reduce their base number of full-time employees—the number used to calculate their future annual increases—to the average annual number of full-time employees at the end of their current fiscal year if lower than their original base number of full-time employees.

This Act also eliminates the use tax exemption for EZ-qualified firms. This incentive conflicts with the intent of the EZ partnership by encouraging EZ-enrolled firms to purchase supplies and equipment from out-of-state rather than local vendors.

SECTION 2. Section 209E-9, Hawaii Revised Statutes, is amended to read as follows:

**“§209E-9 Eligibility; qualified business; sale of property or services.** (a) Any business firm may be eligible to be designated a qualified business for purposes of this chapter if the business:

- (1) Begins the operation of a trade or business within an enterprise zone;
- (2) During each taxable year has at least fifty per cent of its enterprise zone establishment's gross receipts attributable to the active conduct of trade or business within the enterprise zone;
- (3) Increases its average annual number of full-time employees by at least ten per cent by the end of its first tax year of participation; and
- (4) During each subsequent taxable year at least maintains that higher level of employment.

(b) A business firm also may be eligible to be designated a qualified business for purposes of this chapter if the business:

- (1) Is actively engaged in the conduct of a trade or business in an area immediately prior to an area being designated an enterprise zone;
- (2) Meets the requirements of subsection (a)(2); and
- (3) Increases its average annual number of full-time employees employed at the business' establishment or establishments located within the enterprise zone by at least ten per cent annually.

(c) After designation as an enterprise zone, each qualified business firm in the zone shall submit annually to the department an approved form supplied by the department that provides the information necessary for the department to determine if the business firm qualifies as a qualified business. The approved form shall be submitted by each business to the governing body of the county in which the enterprise zone is located, then forwarded to the department by the governing body of the county.

(d) The form referred to in subsection (c) shall be prima facie evidence of the eligibility of a business for the purposes of this section.

(e) Tangible personal property shall be sold at an establishment of a qualified business within an enterprise zone and the transfer of title to the buyer of the tangible personal property shall take place in the same enterprise zone in which the tangible personal property is sold. Services shall be sold at an establishment of a qualified business engaged in a service business within an enterprise zone and the services shall be delivered in the same enterprise zone in which sold. Any services rendered outside an enterprise zone shall not be deemed to be the services of a qualified business.

(f) For any fiscal year that includes September 11, 2001, a business may use its average annual number of full-time employees as of August 31, 2001—rather than its average annual number at the end of its fiscal year including September 11, 2001—if necessary to meet the requirements of subsection (a)(3) and (4) or (b)(3). A business may also use its average annual number of full-time employees at the end of its fiscal year that includes September 11, 2001, as its base number of full-time employees if necessary to meet the requirements of subsection (a)(3) and (4) or (b)(3) in future fiscal years.”

SECTION 3. Section 209E-11, Hawaii Revised Statutes, is amended to read as follows:

**“§209E-11 State general excise [~~and use tax~~] exemptions.** The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from the

manufacture of tangible personal property, the wholesale sale of tangible personal property, the engaging in a service business by a qualified business, or the engaging in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products. ~~[The department shall also certify annually to the department of taxation that any qualified business is exempt from the use tax for purchases by the qualified business.]~~ The gross proceeds received by a contractor licensed under chapter 444 shall be exempt from the general excise tax for construction within an enterprise zone performed for a qualified business within an enterprise zone. The exemption shall extend for a period not to exceed seven years.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 2002.)

## ACT 147

H.B. NO. 2460

A Bill for an Act Relating to the Employees’ Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The tragic terrorist attacks on the East Coast have had a profound negative economic impact on Hawaii and the rest of the United States. On November 14, 2001, the Council of Revenues amended its previous projections by reducing the fiscal year 2001-2002 projection from 4.1 per cent to -0.7 per cent and the fiscal year 2002-2003 projection from 5.2 per cent to 5.1 per cent.

The contrary situation of reduced revenues and increased funding requirements require an in-depth review of both resources and costs. The magnitude of the State’s economic downturn requires the review of all areas, including non-discretionary expenditures.

The contractual relationship of the State, counties, and the employees’ retirement system (ERS) is protected under article XVI, section 2, of the State Constitution. Chapter 88, Hawaii Revised Statutes, provides the requirements for employer contributions to the ERS.

The purpose of this Act is to reduce the annual contributions of public employers to the ERS by amortizing liability over a longer time period. Specifically, this Act extends the payment period to liquidate ERS’s unfunded accrued liability from fifteen years to twenty-nine years beginning plan year 2001.

SECTION 2. Section 88-122, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Commencing with the 1995 fiscal year and each subsequent fiscal year, the actuary shall determine the total unfunded accrued liability using the entry age normal cost funding method separately for each of the two groups of employees in subsection (a). The accrued liability contribution for each of the two groups of employees shall be the annual payment required to liquidate the unfunded accrued liability over a period of [twenty-one years beginning July 1, 1995.] twenty-nine years beginning July 1, 2000. Any increase or decrease in the total unfunded accrued liability resulting from legislative changes in the benefit provisions of the employ-

ees' retirement system shall be liquidated over a period of time to be determined by the actuary."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall take effect retroactive to July 1, 2000.

(Approved June 7, 2002.)

ACT 148

H.B. NO. 2500

A Bill for an Act Relating to Statutory References Affected by Act 253, Session Laws of Hawaii 2000.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 10-9, Hawaii Revised Statutes, is amended to read as follows:

**"§10-9 Salaries; benefit; expenses.** Members of the board:

- (1) Shall receive an annual salary which shall be paid:
  - (A) Exclusively from revenue under section 10-13.5; and
  - (B) In equal amounts, beginning with the first pay period for state employees in November of the year the member of the board is elected.

Effective July 1, 1993, and until the salary commission makes recommendations for salary, the salary of the chairperson of the board shall be \$37,000 a year and the salary of other members of the board shall be \$32,000 a year. Any provision of law to the contrary notwithstanding, all members of the board shall be included in any benefit program generally applicable to officers and employees of the State except for benefit programs relating to retirements;

- (2) Shall be allowed transportation fares between islands and abroad;
- (3) Shall be allowed personal expenses at the rates specified by ~~[section 78-15;]~~ the board while attending board meetings or while on official business as authorized by the chairperson, when those board meetings or official business shall require a member to leave the island upon which the member resides; and
- (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member's duties and responsibilities."

SECTION 2. Section 26-38, Hawaii Revised Statutes, is amended to read as follows:

**"§26-38 Powers and duties of heads of departments.** Except as otherwise provided by this chapter, every power and duty conferred by law and required to be performed by any officer, board, department, bureau, commission, administrative agency, or instrumentality of the State existing immediately prior to November 25, 1959, shall hereafter be exercised and performed by the head of the respective department established by this chapter, whether the head of the department be a single executive, board, or commission.

Except as otherwise provided by this chapter, the head of a department may assign any function vested in his department to any subordinate officer or employee as he deems desirable. With the approval of the governor, the head of a department may establish or abolish within his department any division or other administrative unit to achieve economy and efficiency and in accord with sound administrative principles and practices and procedures.

The head of each department may prescribe regulations for the administration of his department, for the conduct of its employees, for the performance of its business, and for the custody, use and preservation of records, equipment, and other property pertaining thereto; provided that the regulations shall not be inconsistent with the requirements of chapters 76, ~~[77,]~~ 91, and 92, or rules promulgated by the governor, or other laws of the State.”

SECTION 3. Section 29-1, Hawaii Revised Statutes, is amended to read as follows:

“**§29-1 Establishment of office.** There shall be in Washington, District of Columbia, a Hawaii office of federal programs coordinator. The office shall be headed by a coordinator who shall be appointed and removed by the governor, not subject to chapters 76~~[, 77,]~~ and 89. Effective July 1, 1982, the salary shall be \$38,610 a year. Effective July 1, 1986, the salary of the federal programs coordinator shall be \$0 a year. The coordinator shall appoint necessary staff, within available appropriations, not subject to chapters 76~~[, 77,]~~ and 89.

The office is placed within the department of budget and finance for administrative purposes.”

SECTION 4. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;



- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11)
  - (A) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work[-];
  - (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, [and] alternative school project coordinators, and communication aides in the department of education; [the]
  - (C) The special assistant to the state librarian[.], and one secretary for the special assistant to the state librarian[~~-, and members~~]; and
  - (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;

- (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
- (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff; and
- (26) A gender and other fairness coordinator hired by the judiciary.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 5. Section 88-60, Hawaii Revised Statutes, is amended to read as follows:

**“§88-60 Members whose services are on loan to other governments.** Any member whose services are on loan to another government, as authorized by section [79-17,] 78-27, shall retain the member’s membership and shall receive credit in the system for such service[;]; provided that the member returns to the member’s former employment within ninety days after the termination of such service; and[;] provided further that the government receiving the loan of the member’s services fulfills all of the requirements of section [79-18,] 78-27.”

SECTION 6. Section 89-12, Hawaii Revised Statutes, is amended to read as follows:

**“§89-12 Strikes, rights and prohibitions.** (a) It shall be unlawful for any employee to participate in a strike if the employee:

- (1) Is not included in the appropriate bargaining unit involved in an impasse; or
- (2) Is included in the appropriate bargaining unit involved in an impasse that has been referred to arbitration for a decision.

(b) It shall be lawful for an employee, who is not prohibited from striking under subsection (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike under the following conditions:

- (1) The requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith;
- (2) The proceedings for the prevention of any prohibited practices have been exhausted;
- (3) The collective bargaining agreement and any extension of the agreement has expired; and
- (4) The exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

~~[(c) No employee organization shall declare or authorize a strike of employees, which is or would be in violation of this section. Where it is alleged by the public employer that an employee organization has declared or authorized a strike of employees which is or would be in violation of this section, the public employer may apply to the board for a declaration that the strike is or would be unlawful and the board, after affording an opportunity to the employee organization to be heard on the application, may make such a declaration.]~~

~~(d)]~~ (c) If any employee organization or any employee is violating or failing to comply with the requirements of this section, or if there is reasonable cause to believe that an employee organization or an employee will violate or fail to comply with such requirements, the public employer affected shall, forthwith, institute appropriate proceedings in the circuit in which the violation occurs to enjoin the performance of any acts or practices forbidden by this section, or to require the employee organization or employees to comply with the requirements of this section. Jurisdiction to hear and dispose of all actions under this section is conferred upon each circuit court, and each court may issue in compliance with chapter 380, such orders and decrees, by way of injunction, mandatory injunction, or otherwise, as may be appropriate to enforce this section. The right to a jury trial shall not apply to any proceeding brought under this section.”

SECTION 7. Section 103D-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

**“(b)** The policy board shall consist of seven members. Notwithstanding the limitations of section [78-5,] 78-4, the members of the board shall include:

- (1) The comptroller;

- (2) A county employee with significant high-level procurement experience; and
- (3) Five persons who shall not otherwise be full-time employees of the State or any county; provided that at least one member shall be a certified professional in the field of procurement, at least one member shall have significant high-level, federal procurement experience, and at least two members shall have significant experience in the field of health and human services.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy board. The initial and subsequent members of the policy board, other than the comptroller, shall be appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the policy board members shall be subject to the requirements of section 26-34. No member of the policy board shall act concurrently as a chief procurement officer. The members of the policy board shall devote such time to their duties as may be necessary for the proper discharge thereof.”

SECTION 8. Section 103D-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The administrator shall operate independently of the comptroller. The administrator may appoint and dismiss a private secretary without regard to ~~[chapter] chapters 76 [or 77,] and 89~~, who shall serve at the administrator’s pleasure. The comptroller shall provide support to permit the administrator to satisfy all of the administrator’s responsibilities as the chief procurement officer for those governmental bodies of the executive branch of the State for which a chief procurement officer is not otherwise designated.”

SECTION 9. Section 103D-1102, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-1102]]~~ **State agency for surplus property.** The state procurement office shall be the state agency for federal and state surplus personal property unless otherwise specified in this chapter or rules adopted pursuant to chapter 91.

The administrator of the state procurement office shall appoint and prescribe the duties of a surplus property director and other personnel pursuant to ~~[chapters] chapter 76[77,] and the appropriate collective bargaining agreement, executive order, executive directive, or rule~~ and this chapter.”

SECTION 10. Section 103F-301, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103F-301]]~~ **Powers and duties of the administrator.** The administrator of the state procurement office shall carry out the following duties:

- (1) Assist, advise, and guide state agencies in matters relating to planning and purchasing health and human services;
- (2) Establish and maintain a central health and human services contracts database;
- (3) Develop and administer a statewide orientation and training program for purchasing agency employees, provider organization employees, and all other interested parties on all matters relating to carrying out the purposes of this chapter;

- (4) Develop, distribute, and maintain a health and human service procurement manual for all state procurement officials;
- (5) Develop, distribute, and maintain a procurement guide for health and human service vendors wishing to do business with the State;
- (6) Perform periodic review of the procurement practices of all governmental bodies which purchase health and human services;
- (7) Contract for such services as may be necessary for the purposes of this chapter; and
- (8) Establish and fill such positions as may be necessary to carry out the functions of this chapter, without regard to chapters 76[, 77,] and 89.’’

SECTION 11. Section 107-1.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be established in the department of accounting and general services a revolving fund to be known as the public works project assessment fund for the purposes of defraying costs involved in carrying out construction projects managed by the department; managing funds representing accumulated vacation and sick leave credits and retirement benefits for non-general funded employees in the construction program in accordance with section [79-5;] 78-23; equitably collecting and distributing the costs of other current expenses associated with capital improvement, repairs and maintenance, and repairs and alterations projects; and managing the payments of employee transportation requirements such as car mileage reimbursements in accordance with applicable law and collective bargaining agreements.’’

SECTION 12. Section 109-2, Hawaii Revised Statutes, is amended to read as follows:

“**§109-2 Stadium authority; powers and duties.** The powers and duties of the stadium authority shall be as follows:

- (1) To maintain, operate, and manage the stadium and related facilities, and to provide for the maintenance, operation, management, and promotion of the Kapolei recreational sports complex;
- (2) To prescribe and collect rents, fees, and charges for the use or enjoyment of the stadium or any of its facilities;
- (3) To make and execute contracts and other instruments necessary or convenient to exercise its powers under this chapter and subject to any limitations in this chapter, to exercise all powers necessary, incidental, or convenient to carry out and effectuate the purposes and provisions of this chapter, including entering into contracts under chapter 102 or 103D for the management of the Kapolei recreational sports complex, to include but not be limited to the operation, maintenance, and promotion of the complex in a manner that is beneficial to both the State and the contractor. These contracts may contain revenue sharing incentives based on increased usage of the complex;
- (4) To adopt, amend, and repeal in accordance with chapter 91 rules it may deem necessary to effectuate this chapter and in connection with its projects, operations, and facilities;
- (5) To appoint a manager and a deputy manager who shall have such qualifications as the authority deems necessary and who shall hold their respective offices at the pleasure of the authority. The manager and deputy manager shall be exempt from the requirements of chapters 76[, 77,] and 89. Effective January 1, 1989, and January 1, 1990, the salary of the manager shall be set by the governor within the range from

- \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively. Effective January 1, 1989, and January 1, 1990, the salary of the deputy manager shall be \$62,854 and \$65,683 a year, respectively. The manager shall have full power to administer the affairs of the stadium and related facilities, and to provide for a management contract for the Kapolei recreational sports complex, subject to the direction and approval of the authority. The manager shall, subject to the approval of the authority, have power to appoint, suspend, and discharge a secretary who shall be exempt from the requirements of chapters 76[~~, 77,~~] and 89, and such other employees, subordinates, and assistants as may be necessary for the proper conduct of the business of the authority. Except for persons hired on contract or otherwise as provided in section 109-3 and except for the manager, deputy manager, and secretary, all appointments, suspensions, or discharges shall be made in conformity with the applicable provisions of [~~chapters~~] chapter 76 [~~and 77~~]; and
- (6) To plan, promote, and market the stadium, its related facilities, and the Kapolei recreational sports complex.”

SECTION 13. Section 125-4, Hawaii Revised Statutes, is amended to read as follows:

“**§125-4 Personnel, delegation of powers.** The governor may appoint or employ boards, agencies, officers, employees, and other persons, or any of them, for the purpose of carrying out the provisions of this chapter, and may delegate to the boards, agencies, or persons, or to any government board, agency, officer, or employee, state or otherwise, any of the governor’s duties or powers under this chapter. All such officers and employees on a temporary basis, whether or not employed by contract, shall be exempt from and [~~not~~] neither subject to nor entitled to the benefits of the provisions of chapters 76[~~, 77, and 79,~~] and [~~part II of chapter~~] 88, or any other law [~~which~~], appropriate collective bargaining agreement, executive order, executive directive, or rule that is inapplicable to temporary employees of the State.”

SECTION 14. Section 125C-8, Hawaii Revised Statutes, is amended to read as follows:

“[~~§125C-8~~] **Personnel; delegation of powers.** The governor may appoint or employ temporary boards, agencies, officers, employees, and other persons, or any of them, for the purpose of carrying out the provisions of this chapter. All such temporarily appointed or employed officers and employees, whether or not employed by contract, shall be exempt from and not subject to nor entitled to the benefits of the provisions of chapters 76[~~, 77, and 79,~~] and [~~part II of chapter~~] 88, or any other law, collective bargaining agreement, executive order, executive directive, or rule that is inapplicable to temporary employees of the State.”

SECTION 15. Section 128-10, Hawaii Revised Statutes, is amended to read as follows:

“**§128-10 Other powers.** The governor further, irrespective of the existence of a civil defense emergency period, may:

- (1) Cooperate with the President and the heads of the armed forces, and the civil defense agency of the United States, and with the officers and agencies of other states in matters pertaining to the civil defense of the State and nation and the incidents thereof, and take any measures which

the governor may consider proper to carry into effect any request of the President or the appropriate federal officers and agencies, for any action looking to civil defense;

- (2) Lease, lend, or otherwise furnish, on such terms and conditions as the governor may consider necessary to promote the public welfare and protect the interest of the State, any real or personal property of the state government or its political subdivisions, to the President, the heads of the armed forces, or to the civil defense agency of the United States;
- (3) On behalf of the State enter into mutual aid agreements or compacts with the federal government and with other states. The agreements or compacts shall be limited to civil defense. It may be provided in an interstate compact, and the governor with the advice and consent of the political subdivisions included within the scope of the compact, may agree on behalf of the State that:
  - (A) Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of the compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as if they were performing their duties in the state in which normally employed or rendering services;
  - (B) Whenever any person holds a license, certificate, or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving this skill in any party state to meet an emergency or disaster and the state shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered;
  - (C) No party state or its officers or employees rendering aid in another state pursuant to the compact shall be liable on account of any act or omission on the part of the forces while so engaged, or on account of the maintenance or use of any materials, equipment, goods, or facilities in connection therewith;
  - (D) As an alternative to paragraph (C), such other or modified form of immunity as the governor may find acceptable;
  - (E) Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of the forces in case the members sustain injuries or are killed while rendering aid pursuant to the compact, in the same manner and on the same terms as if the injury or death were sustained within the state;
  - (F) Any party state rendering aid in another state pursuant to the compact shall be reimbursed by the party state receiving aid, or by the United States government under plans approved by it, for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for all costs incurred in connection with requests for aid; provided that this paragraph shall not be deemed to preclude the State, if it is the aiding state, from assuming in whole or in part the loss, damage, expense, or other cost, or from loaning the equipment or donating the services to the receiving party state without charge or cost;

- (G) Any party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items; the expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it; and
- (H) In the event of an evacuation, the party state of which the evacuees are residents shall, after the termination of the emergency or disaster, assume the responsibility for the ultimate support or repatriation of the evacuees;
- (4) Sponsor and develop mutual aid plans and agreements for civil defense between the political subdivisions of the State and between one or more political subdivisions and other public or private agencies, for the furnishing or exchange of food, clothing, medicine, and other materials; engineering services, emergency housing; police services; health, medical, and related services; fire fighting, rescue, transportation, and construction services and facilities; personnel necessary to provide or conduct these services; and such other materials, facilities, personnel, and services as may be needed. The mutual aid plans and agreements may be made with or without provisions for reimbursement of costs and expenses, and on such terms and conditions as are deemed necessary;
- (5) Order and direct government agencies, officers, and employees, state or local, to take such action and employ such measures for law enforcement, medical, health, fire fighting, traffic control, warnings, and signals, engineering, rescue, construction, emergency housing, and other welfare, hospitalization, transportation, water supply, public information, training, and other civil defense and emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers. All such agencies and officers shall cooperate with and extend their services, materials, and facilities to the governor as the governor may request;
- (6) Take possession of, use, manage, control, and reallocate any public property, state or county, real or personal, required by the governor for the purposes of this chapter, including, without limitation, airports, parks, playgrounds, and schools, and other public buildings. Whenever the property is so taken the governor shall have power to make such provision for the temporary accommodation of the government service affected thereby as the governor may deem advisable. Like provisions may be made at any time whenever it is necessary to relocate any government service because of any emergency condition;
- (7) Utilize all services, materials, and facilities of nongovernmental agencies, relief organizations, community associations, and other civil groups and private agencies that may be made available;
- (8) Receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter; establish funds in the treasury for the deposit and expenditure of the moneys; procure federal aid as the same may be available, and apply the provisions of chapter 29 in cases of federal aid even though not in the form of money. The contributions or grants are appropriated for the purposes of this chapter, or for the special purposes;



- (9) Provide for the repair and maintenance of public property, whenever adequate provision therefor is not otherwise made; insure the property against any war risk, including without limitation damage or loss resulting from or arising out of an attack or action in resisting or combating an attack or apparent attack; provide for the restoration, renovation, replacement, or reconstruction of insured property in the event of damage or loss, and make temporary restoration of public utilities and other vital facilities in the event of an attack or other disaster;
- (10) Purchase, make, produce, construct, rent, lease, or procure by condemnation or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace, or reconstruct, and distribute, furnish, or otherwise dispose of, with or without charges therefor, materials and facilities for civil defense and other emergency functions; procure federal aid therefor whenever feasible; and take any measures which may, in the governor's opinion, secure, stimulate, or increase similar activities by private or public persons or organizations. Chapter 103D, sections 103-50, 103-50.5, 103-53, 103-55, 105-1 to 105-10, and 464-4 shall not apply to any civil defense or other emergency functions if and to the extent that the governor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions. In cases of extreme urgency during a civil defense emergency period the governor may suspend the penal provisions of sections 46-45 and 103-9, except those provisions that concern falsification;
- (11) Appoint, employ, train, equip, and maintain, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, ~~[77, and 79, part II of chapter 88 and section 78-1,]~~ 78, and 88, such agencies, officers, and other persons as the governor deems necessary to carry out this chapter; determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 128-15, provide for and effect the interchange of personnel, by detail, transfer, or otherwise, between the State and any political subdivision, or among any agencies or departments of the State;
- (12) Make charges in such cases and in such amounts as the governor deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the government under this chapter; and make charges for licenses or permits to cover administrative expense connected therewith;
- (13) Make such contracts as may be necessary to carry out this chapter;
- (14) Establish special accounting forms and practices whenever necessary; and
- (15) Take any and all steps necessary or appropriate to carry out the purposes of this chapter and to provide for civil defense and other emergency functions.

The powers and authority conferred upon the governor by this chapter are in addition to any other powers or authority conferred upon the governor by the laws of the United States and of the State for the same or a like purpose, and shall not be construed as abrogating, limiting, or modifying any such powers, or authority."

SECTION 16. Section 128-13, Hawaii Revised Statutes, is amended to read as follows:

**“§128-13 Power and authority of local organizations.** Each political subdivision shall have the power and authority:

- (1) Deputy director's staff. To provide, for the deputy director of such political subdivision, an assistant or assistants whose appointment shall be approved by the director of civil defense, and such technical, clerical, stenographic, and other personnel, office space, furniture, equipment, supplies, and funds as may be necessary to carry out the purposes of this chapter. Chapter 76 shall apply to the full-time deputy director or the deputy director's first assistant.
- (2) Appropriations, etc. To make appropriations and authorize expenditures for the purposes of this chapter, including the power to place under the control of the governor, for expenditure as matching funds for federal aid, or for any purpose within the powers of the governor, moneys appropriated by it; to make appropriations and authorize expenditures for the purposes of this chapter out of the normal revenues or fund balances or surpluses of the political subdivision, notwithstanding any legal restrictions upon the purposes for which the funds may be expended, except that pension and retirement funds, funds set aside for the redemption of bonds or the payment of interest thereon, trust funds, loan funds, and funds received from the federal government or from any person for specific purposes shall not be affected.
- (3) Procurement, etc. To purchase, make, produce, construct, rent, lease, or procure by condemnation, or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace or reconstruct, and distribute, furnish or otherwise dispose of, with or without charges, materials and facilities for civil defense; and to procure federal aid therefor whenever feasible. Chapter 103D, sections 103-50, 103-50.5, 103-53, 103-55, 105-1 to 105-10, and 464-4 shall not apply to any civil defense functions of and to the extent that the mayor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions.
- (4) Personnel. To provide for the appointment, employment, training, equipping, and maintaining, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, [77, 79,] 78, and 88 [and section 78-1,] of such agencies, officers, and other persons as it deems necessary to carry out this chapter; to determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 128-15, to provide for the interchange of personnel, by detail, transfer or otherwise, between agencies or departments of the political subdivision, or between political subdivisions.
- (5) Contributions. To receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter.
- (6) Charges. To make charges in such cases and in such amounts as it deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the political subdivision under this chapter.
- (7) Contracts. To make or authorize such contracts as may be necessary to carry out this chapter.

- (8) Mutual aid plans. To participate in and carry out mutual aid plans and agreements or compacts, sponsored or developed by the state civil defense agency.
- (9) Continuity of government. To insure continuity of government during a civil defense emergency period, the legislative body of a county may by ordinance, unless otherwise provided by law, provide the procedure for the appointment and designation of stand-by officers for the legislative body and the elected chief executive of the county for the emergency period, who shall serve in the event of the unavailability of the officers for whom they stand by.”

SECTION 17. Section 193-23, Hawaii Revised Statutes, is amended to read as follows:

**“§193-23 Personnel laws; applicability.** The provisions of chapters 76 [to 80, 85], 78, and 88[~~except the requirements for loyalty oath as contained in section 85-32~~] and the appropriate collective bargaining agreement, executive order, executive directive, or rule and except provisions of state law relating to the application of the Social Security Act of the United States to the extent that the Act shall be applicable under the federal law establishing the youth programs, shall not apply to persons employed under this part.”

SECTION 18. Section 196D-13, Hawaii Revised Statutes, is amended to read as follows:

**“[[§196D-13]] Exemptions from certain state laws.** In order to promote the purposes of this chapter, all persons hired by the department to effectuate this chapter are excepted from chapters 76[~~77~~] and 89.”

SECTION 19. Section 201B-2, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

**“(g)** The authority may employ persons not subject to chapters 76[~~77~~] and 78 to perform and execute the functions of the authority.”

SECTION 20. Section 201B-3, Hawaii Revised Statutes, is amended to read as follows:

**“[[§201B-3]] Powers.** Except as otherwise limited by this chapter, the board may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter, provided that the authority may enter into contracts and agreements for a period of up to five years;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
- (6) Through its executive director represent the authority in communications with the governor and with the legislature;
- (7) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76[~~77~~] and 78;

- (8) Through its executive director purchase supplies, equipment, or furniture;
- (9) Through its executive director allocate the space or spaces which are to be occupied by the authority and appropriate staff;
- (10) Engage the services of qualified persons to implement the State's tourism marketing plan or portions thereof as determined by the board;
- (11) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (12) Procure insurance against any loss in connection with its property and other assets and operations in such amounts from such insurers as it deems desirable;
- (13) Contract for, and accept gifts or grants in any form from any public agency or any other source;
- (14) Create a vision and develop a long range plan for tourism in Hawaii, including product development, infrastructure, and diversification issues;
- (15) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State;
- (16) Develop and implement the state tourism strategic marketing plan, which shall be updated every three years, to promote and market the State as a desirable visitor destination;
- (17) Have a permanent, strong focus on marketing and promotion;
- (18) Conduct market development-related research as necessary;
- (19) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
- (20) Work to eliminate or reduce barriers to travel in order to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
- (21) Market and promote sports-related activities and events;
- (22) Coordinate the development of new products with the public and private sectors, including the development of sports, culture, health, education, business, and eco-tourism;
- (23) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
- (24) Encourage the development of tourism educational, training, and career counseling programs;
- (25) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary; and
- (26) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter."

SECTION 21. Section 201G-474, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The executive director of the corporation shall appoint a state homeless section administrator to carry out the purposes of this subpart and coordinate all programs and responses of state agencies relating to the problem of homelessness. The administrator, with approval of the executive director, may contract with private services to carry out the duties and responsibilities of the program.

Notwithstanding any other law to the contrary, any contracts entered into by the administrator with a private sector entity pursuant to this subsection shall not be subject to chapters 76~~[, 77,]~~ and 89. This subsection shall apply to contracts entered

into by the state homeless programs coordinator with private sector entities pursuant to Act 279, Session Laws of Hawaii 1992, section 3, before July 14, 1998.”

SECTION 22. Section 232E-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§232E-1**~~[H]~~ **Establishment of the commission.** There shall be a tax review commission, hereinafter called the commission. The commission shall consist of seven members who shall be appointed by the governor with the advice and consent of the senate and shall be in the department of taxation for administrative purposes. The commission shall elect its chairperson from one of its members. The members shall receive no compensation for their services, but shall be reimbursed for actual expenses incurred in the performance of their duties.

The commission may enter into contracts with consultants and engage employees necessary to perform its duties without regard to chapter 76 ~~or 77~~. Departments of the state government shall make available to the commission such data and facilities as are necessary for it to perform its duties.”

SECTION 23. Section 268-4, Hawaii Revised Statutes, is amended to read as follows:

“**§268-4 Appropriation; personnel.** There is appropriated from the general revenues of the State the sum of \$150,000 or so much thereof as may be necessary, to defray the cost of any examination, investigation, survey, or reconnaissance and all other expenses necessary for the issuance of any bonds and the implementation of the ferry system; provided that upon the sale of the revenue bonds authorized herein, that portion of the \$150,000 which is expended for planning, designing, or preparation of plans and specifications for the construction or improvement of the ferry vessel or terminal facilities needed for the operation of the ferry system shall be repaid by the department of transportation to the State.

The department may hire personnel to perform the services noted above and to implement the ferry system. The personnel, however, shall be hired by contract and be exempt from ~~[chapters]~~ chapter 76 and ~~[77, and sections 79-1 and 79-8.]~~ the appropriate collective bargaining agreement, executive order, executive directive, or rule.”

SECTION 24. Section 269-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Effective January 1, 1989, and January 1, 1990, the chairperson of the commission shall be paid a salary set by the governor within the range of \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively, and each of the other commissioners shall be paid a salary equal to ninety-five per cent of the chairperson’s salary. The commissioners shall be exempt from chapters 76~~[-77-]~~ and 89 but shall be members of the state employees retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter 87.

The commission is placed within the department of budget and finance for administrative purposes.”

SECTION 25. Section 302A-636, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§302A-636**~~[H]~~ **Cafeteria managers.** All cafeteria managers employed in the department shall be employed ~~[under]~~ and have their salaries fixed in accordance

with chapter 76 and ~~[shall have their salaries fixed in accordance with chapter 77,]~~ the appropriate collective bargaining agreement, executive order, executive directive, or rule, and the monthly rates of basic compensation so determined shall be payable over a twelve-month period without proration or deduction for periods when school is not in session. Cafeteria managers shall have the same vacation and sick leave allowances as school teachers and principals.”

SECTION 26. Section 302A-637, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-637]]~~ **Cafeteria workers.** All cafeteria workers employed in the department shall be employed ~~[under]~~ and have their compensation adjusted in accordance with chapter 76 and ~~[shall have their compensation fixed in accordance with chapter 77,]~~ the appropriate collective bargaining agreement, executive order, executive directive, or rule, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All cafeteria workers shall be employed on a full-time basis, except that a limited number of part-time workers may be employed by the department. No cafeteria worker employed on a part-time basis shall work less than twenty hours per week. The department shall establish a schedule, based on factors that determine the need for part-time workers, fixing the number of part-time workers that may be employed by the department.”

SECTION 27. Section 302A-639, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-639]]~~ **Houseparents; statewide center for students with hearing and visual impairments.** All houseparents at the statewide center for students with hearing and visual impairments employed in the department shall be employed ~~[under chapter 76 and shall have their compensation fixed in accordance with chapter 77,]~~ and have their compensation adjusted according to chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All houseparents shall be employed for twelve months on a full-time basis.”

SECTION 28. Section 302A-1105, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-1105]]~~ **Compensation; expenses.** Board of education members shall be allowed:

- (1) Compensation at the rate of \$100 per day for each day’s actual attendance at meetings;
- (2) Transportation fares between islands and abroad; and
- (3) Personal expenses at the rates specified by ~~[section 78-15,]~~ the board while attending board meetings or while on official business as authorized by the chairperson, when the board meetings or official business require a board member to leave the island upon which the board member resides.”

SECTION 29. Section 304-4.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of regents may appoint or retain by contract one or more attorneys who are independent of the attorney general, to provide legal services for the university, including:

- (1) Representation for the university in civil actions to which the university is a party, either directly or through the acts or omissions of its officers or employees;
- (2) Advice and assistance to ensure the lawful and efficient administration and operation of the university;
- (3) Review and approval of documents relating to the acquisition of land or interest in land by the university; and
- (4) Other legal service specified by the board of regents.

The board of regents may fix the compensation of the attorneys appointed pursuant to this section. Attorneys appointed or retained by contract shall be exempt from chapters 76[;77,] and 89.”

SECTION 30. Section 304-10.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Management and other support services provided by the research corporation pursuant to this section may include:

- (1) The procurement of goods and services;
- (2) Employment of personnel; and
- (3) The provision of advance funding for research and training contracts and grants.

These services may be provided by the corporation to the university without regard to chapter 76, [77,] 78, 89, or 103D.”

SECTION 31. Section 304-13, Hawaii Revised Statutes, is amended to read as follows:

**“§304-13 Classification schedule.** The board of regents shall classify all members of the faculty of the university including research workers, extension agents, and all personnel engaged in instructional work as defined in section 76-16 and adopt a classification schedule ~~[conforming, as nearly as may be practical, to the schedules set forth in chapter 77. The department of human resources development of the State shall, upon the request of the board of regents, render such assistance as may be practicable in connection with such classification. The adjustments of compensation to conform with the classification shall be made in general accordance, so far as may be practical, with chapter 77, relating to state employees.] and compensation plan for these employees.~~

Annual increases of compensation shall be allowable~~[-and shall be allowed, in general accordance, so far as may be practical, with chapter 77, providing for the allowance of annual increases to state employees]~~ for efficient service, and the board of regents shall adopt a fair and reasonable plan for rating the efficiency of individual employees affected by this section.”

SECTION 32. Section 307-4, Hawaii Revised Statutes, is amended to read as follows:

**“§307-4 Research corporation excepted from certain state laws.** In order to carry out the purposes and objectives of the research corporation, including the conduct of research and training projects, the research corporation shall be granted flexibility in hiring its personnel and in handling and disbursing moneys by being excepted from the following state laws:

- (1) Sections 36-27 and 36-30, relating to special fund reimbursements to the state general fund;

- (2) Chapter 103D and section 103-42, relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended;
- (3) Chapter 76, relating to civil service; and
- [4) Chapter 77, relating to compensation; and
- (5)] (4) Section 78-1, relating to public employment.”

SECTION 33. Section 307-5, Hawaii Revised Statutes, is amended to read as follows:

**“§307-5 Officers and employees of the research corporation.** The president of the University of Hawaii shall be the president of the corporation. The board of directors may also appoint such other officers and employees as may be necessary in administering the affairs of the research corporation. It shall set the employees’ duties, responsibilities, salaries, holidays, vacations, leaves, hours of work, and working conditions. It may grant such other benefits to its employees as it deems necessary. Employees of the research corporation shall not be entitled to any benefits conferred under chapter 76 relating to civil service, [~~chapter 77 relating to compensation, chapters~~] chapter 78 [to-83] relating to public [employment, and] service, chapter 88 relating to pension and retirement system[-], and the appropriate collective bargaining agreement, executive order, executive directive, or rule.”

SECTION 34. Section 312-3, Hawaii Revised Statutes, is amended to read as follows:

**“§312-3 Exchange of librarians.** The board of education may contract for the exchange of librarians with librarians of any state, country, or territory in accordance with this section, except as otherwise provided in section [76-37-] 78-27. Local librarians so exchanged shall be paid their regular salaries out of the funds appropriated for personal services in the library budget for the library concerned. The qualifications of all librarians from any such state, country, or territory so exchanged shall be equal to those of the local librarians exchanged. In the selection of local librarians for exchange, preference shall be given to persons born in the State. The requirements of citizenship shall not apply to any librarian coming to the State from any foreign state, country, or territory under any such contract of exchange. All librarians so exchanged shall furnish their own transportation to and from the state, country, or territory with which exchanged.

No compensation shall be paid by the State to visiting exchange librarians; provided that in any case where the local exchanged librarian becomes incapacitated or, for any reason, leaves the exchanged position permanently, the library concerned may pay the visiting exchange librarian an amount not to exceed the salary rating of the local exchanged librarian, such an arrangement to continue until the end of the period of exchange or until such time as some satisfactory adjustment has been made.”

SECTION 35. Section 321-5, Hawaii Revised Statutes, is amended to read as follows:

**“§321-5 Contract for exchange of Hawaii personnel.** The department of health may contract with any state, or the health department of any state having the power to so contract, for the exchange of Hawaii personnel for personnel of the health department of any such state. Any such exchange shall be made under rules and regulations prescribed by the department, in no case shall be for a period exceeding one year, and in all cases shall be subject to the following provisions:



- (1) That each person exchanged by the health department of any state shall possess qualifications equal to the qualifications of the person exchanged for him from Hawaii;
- (2) That the person exchanged from Hawaii shall have served for not less than three years prior to beginning of the exchange period in the Hawaii personnel;
- (3) That in the selection of Hawaii personnel for exchange, preference shall be given to persons born in the State;
- (4) That each person exchanged by the health department of any state shall hold in the health department of such state a position the same as or equivalent to the position held by the person exchanged for him from Hawaii;
- (5) That the person exchanged from Hawaii shall be paid his regular salary out of the funds appropriated therefor, but nothing in addition thereto;
- (6) That the State shall not pay any traveling or other expenses of the Hawaii personnel or of the personnel of the health department of any state coming to Hawaii under any contract of exchange. This prohibition shall be construed to include all travel, transportation, board, lodging, or other expenses incidental to or arising out of any exchange;
- (7) That the State shall not pay any compensation to the person coming to Hawaii under any contract of exchange; provided that in any case where the person so exchanged from Hawaii becomes incapacitated, or, for any reason, leaves the exchange position permanently, the department may pay the visiting exchange person an amount not to exceed the salary rating of the person so exchanged from Hawaii, such an arrangement to continue until the end of the period of exchange or until such time as some adjustment satisfactory to the department is made;
- (8) That any provision of law to the contrary notwithstanding, the state requirements in respect to civil service, citizenship, or residence shall not apply to any person coming to Hawaii under any such contract of exchange;
- (9) That [section 78-15] the appropriate collective bargaining agreement, executive order, executive directive, or rule regarding traveling expenses for state officials shall not apply to Hawaii personnel exchanged under this section.

The department may make such rules and regulations as it may deem necessary concerning the powers, rights, functions, conduct, duties, and liabilities of, exercised by or imposed upon any person coming to Hawaii under any contract of exchange.

As used in this section, unless the text clearly otherwise indicates, "Hawaii personnel" means public health nurses, sanitary officers, and medical officers; "state" means any state or territory of the United States, or county or municipality of any such state or territory; and "health department" means the board of health, department of health, president of the board of health, or other public authority authorized by law to administer or administering the public health laws of any state."

SECTION 36. Section 321-245, Hawaii Revised Statutes, is amended to read as follows:

**"[§321-245] School health aides.** All full-time school health aides employed in the department of health shall be employed [under] and have their compensation fixed in accordance with chapter 76 [and shall have their compensation fixed in accordance with chapter 77;] and the appropriate collective bargaining

agreement, executive order, executive directive, or rule; provided that their compensation shall be based on a six and one-half hour work day and provided further that:

- (1) The monthly rate of compensation for all school health aides employed less than full-time shall be based on the number of hours they actually work;
- (2) The monthly rate of compensation for full-time health aides so determined shall be multiplied by ten and then divided by twelve and the resulting amount shall be the employee's monthly salary payable over a twelve-month period;
- (3) The health aides shall have the same working schedule and leave allowance of school teachers in the department of education."

SECTION 37. Section 323F-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other law to the contrary, the corporation shall have and exercise the following duties and powers:

- (1) Developing its own policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the system of public health facilities and services without regard to chapter 91;
- (2) Evaluating the need for health facilities and services;
- (3) Entering into and performing any contracts, leases, cooperative agreements, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms it may deem appropriate, with either:
  - (A) Any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof; or
  - (B) Any person, firm, association, or corporation, whether operated on a for-profit or not-for-profit basis;
 provided that the transaction furthers the public interest;
- (4) Conducting activities and entering into business relationships as the corporation board deems necessary or appropriate, including but not limited to:
  - (A) Creating nonprofit corporations, including but not limited to charitable fund-raising foundations, to be controlled wholly by the corporation or jointly with others;
  - (B) Establishing, subscribing to, and owning stock in business corporations individually or jointly with others; and
  - (C) Entering into partnerships and other joint venture arrangements, or participating in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity; provided that any corporation, venture, or relationship entered into under this section furthers the public interest; provided further that this paragraph shall not be construed to authorize the corporation to abrogate any responsibility or obligation under paragraph (15);
- (5) Participating in and developing prepaid health care service and insurance programs and other alternative health care delivery programs, including programs involving the acceptance of capitated payments or premiums that include the assumption of financial and actuarial risk;
- (6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any of the corporation's powers;
- (7) Preparing and executing all corporation budgets, policies, and procedures;

- (8) Setting rates and charges for all services provided by the corporation without regard to chapter 91;
- (9) Developing a corporation-wide hospital personnel system that is subject to chapters 76[, 77,] and 89;
- (10) Developing the corporation's capital and strategic plans;
- (11) Suing and being sued; provided that the corporation shall enjoy the same sovereign immunity available to the State;
- (12) Making and altering corporation board bylaws for its organization and management without regard to chapter 91;
- (13) Adopting rules, without regard to chapter 91, governing the exercise of its powers and the fulfillment of its purpose under this chapter;
- (14) Entering into any contract or agreement whatsoever, not inconsistent with this chapter or the laws of this State, and authorizing the corporation chief executive officer to enter into all contracts, execute all instruments, and do all things necessary or appropriate in the exercise of the powers granted in this chapter, including securing the payment of bonds;
- (15) Issuing revenue bonds subject to the approval of the legislature; provided that all revenue bonds shall be issued pursuant to part III, chapter 39;
- (16) Reimbursing the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for the purposes of the corporation;
- (17) Pledging or assigning all or any part of the receipts and revenues of the corporation for purposes of meeting bond or health systems liabilities;
- (18) Owning, purchasing, leasing, exchanging, or otherwise acquiring property, whether real, personal or mixed, tangible or intangible, and of any interest therein, in the name of the corporation, which property is not owned or controlled by the State but is owned or controlled by the corporation;
- (19) Maintaining, improving, pledging, mortgaging, selling, or otherwise holding or disposing of property, whether real, personal or mixed, tangible or intangible, and of any interest therein, at any time and manner, in furtherance of the purposes and mission of the corporation; provided that the corporation legally holds or controls the property in its own name; and provided further that the corporation shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of all or substantially all of its property;
- (20) Purchasing insurance and creating captive insurers in any arrangement deemed in the best interest of the corporation, including but not limited to funding and payment of deductibles and purchase of reinsurance;
- (21) Acquiring by condemnation, pursuant to chapter 101, any real property required by the corporation to carry out the powers granted by this chapter;
- (22) Depositing any moneys of the corporation in any banking institution within or without the State, and appointing, for the purpose of making deposits, one or more persons to act as custodians of the moneys of the corporation;
- (23) Contracting for and accepting any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the State, any state agency, or any other source, or any combination thereof, and complying, subject to this chapter, with the terms and conditions thereof;

- (24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation or association through or in the health facilities of the corporation or otherwise;
- (25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities, including without limitation, determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, and adopting and implementing reasonable rules, without regard to chapter 91, for the credentialing and peer review of all persons and health professionals within the facility;
- (26) (A) Investing any funds not required for immediate disbursement in property or in securities that meet the standard for investments established in chapter 88 as provided by the corporation board; provided the investment assists the corporation in carrying out its public purposes; selling from time to time securities thus purchased and held, and depositing any securities in any bank or financial institution within or without the State. Any funds deposited in a banking institution or in any depository authorized in this section shall be secured in a manner and subject to terms and conditions as the corporation board may determine, with or without payment of any interest on the deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any bank or financial institution incorporated under the laws of this State may act as depository of any funds of the corporation and may issue indemnity bonds or may pledge securities as may be required by the corporation board.
- (B) Notwithstanding subparagraph (A), contracting with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation and of any moneys held in trust or otherwise for the payment of notes or bonds and carrying out the contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and deposits of such moneys, may be secured in the same manner as moneys of the corporation, and all banks and trust companies are authorized to give security for the deposits;
- (27) Entering into any agreement with the State including but not limited to contracts for the provision of goods, services, and facilities in support of the corporation's programs, and contracting for the provision of services to or on behalf of the State;
- (28) Having a seal and altering the same at pleasure;
- (29) Waiving, by means that the corporation deems appropriate, the exemption from federal income taxation of interest on the corporation's bonds, notes, or other obligations provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption;
- (30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the corporation is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemp-

- tion from chapter 103D and shall not subject the corporation to any other provision of chapter 103D;
- (31) Authorizing and establishing positions;
  - (32) Calling upon the attorney general for such legal services as the corporation may require; and
  - (33) Having and exercising all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.”

SECTION 38. Section 323F-8, Hawaii Revised Statutes, is amended to read as follows:

“**§323F-8 Chief executive officer; exempt positions.** (a) The corporation board may appoint, exempt from [~~chapters~~] chapter 76 [~~and 77~~] and section 26-35(4), a chief executive officer of the corporation whose salary shall be set by the corporation board. The chief executive officer may also appoint up to eighteen other personnel, exempt from chapters 76[~~, 77,~~] and 89, to work directly for the chief executive officer and the corporate board.

(b) The corporation board or its designee may discharge its exempt personnel with or without cause; provided that removal without cause shall not prejudice any contract rights of personnel.

(c) The corporation’s chief executive officer or the chief executive officer’s designee may appoint, exempt from chapters 76[~~, 77,~~] and 89, hospital administrators, assistant administrators, directors of nursing, medical directors, and staff physicians, to facilitate the management of facilities within the corporation; provided that directors of nursing appointed before July 1, 1998, may maintain their civil service status as provided in [~~chapters~~] chapter 76 [~~and 77,~~] by so communicating in writing to the chief executive officer by October 31, 1998. Hospital administrators and assistant administrators appointed before July 1, 1983, may maintain their permanent civil service status as provided in [~~chapters~~] chapter 76 [~~and 77~~].”

SECTION 39. Section 349-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The head of this office shall be known as the director of the executive office on aging, hereinafter referred to as director. The director shall have professional training in the field of social work, education, public health, and other related fields; extensive direct experience in programs or services related to elders; and recent experience in a supervisory, consultative, or administrative position. The director shall be nominated and appointed by the governor without regard to chapters 76[~~, 77,~~] and 89. Effective January 1, 1989, and January 1, 1990, the salary of the director shall be \$56,505 and \$59,048 a year, respectively. The director shall be included in any benefit program generally applicable to the officers and employees of the State.”

SECTION 40. Section 363-2, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The head of the office shall be known as the director of the office of veterans’ services. The director shall be nominated and appointed by the governor without regard to chapters 76[~~, 77,~~] and 89. Effective July 1, 1990, the salary of the director shall be \$59,048 a year. The director shall be included in any benefit program generally applicable to the officers and employees of the State.

(c) The director shall have the following principal functions, duties, and powers:

- (1) Serve as the principal official in state government responsible for the performance, development, and control of programs, policies, and activities under this chapter;
- (2) Oversee, supervise, and direct the performance by the director's subordinates of activities in such areas as planning, evaluation, and coordination of veterans programs and development of a statewide service delivery network;
- (3) Assess the policies and practices of other agencies with respect to delivery of services and benefits to veterans;
- (4) Administer funds allocated for the office, and apply for, receive, and disburse grants and donations from all sources for veterans programs and services provided under this chapter;
- (5) Establish a clearinghouse for complaints of persons regarding services to veterans, or operations of state and county agencies affecting veterans, investigate such complaints, and refer the complaints and the director's findings to the appropriate agency for corrective action;
- (6) Adopt, amend, and repeal rules pursuant to chapter 91 for the purposes of this chapter;
- (7) Employ and retain such staff as may be necessary for the purposes of this chapter, in conformance with chapters 76, ~~[77, and]~~ 89, and the appropriate collective bargaining agreements, executive orders, executive directives, or rules, except for the position of coordinator and executive secretary to the director, who shall be hired without regard to chapters 76~~[, 77,]~~ and 89; ~~[and]~~
- (8) Contract for or grant such services as may be necessary for the purposes of this chapter, including a master contract with other state agencies receiving federal and state funds for programs and services for veterans, and purchase of service agreements with appropriate agencies; and
- (9) Oversee the development, establishment, and operation of a state veterans cemetery on Oahu; develop and administer the policies and procedures of the state veterans cemetery in accordance with the United States Veterans Administration and existing state guidelines; oversee the maintenance of state veterans cemeteries on all islands."

SECTION 41. Section 371-4, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The chairperson of the appeal board shall be responsible for the administrative functions of the appeal board. The appeal board may:

- (1) Appoint an executive officer and employ other employees as it deems necessary in the performance of its functions;
- (2) Set the duties and compensation of the executive officer and employees; and
- (3) Provide for the reimbursement of actual and necessary expenses incurred by the executive officer and employees in the performance of their duties, within the amounts made available by appropriations therefor.

Members of the appeal board and employees other than clerical and stenographic employees shall be exempt from chapters 76~~[, 77,]~~ and 89. Clerical and stenographic employees shall be employed in accordance with ~~[chapters]~~ chapter 76 ~~[and 77]."~~

SECTION 42. Section 377-3, Hawaii Revised Statutes, is amended to read as follows:

**“§377-3 Conciliator.** In the event the board receives information that a labor dispute exists and determines that the dispute is within its jurisdiction and that the possibility of settlement and termination of the dispute may be increased by conciliation, the board shall so notify the governor.

Upon receipt of the notice, the governor shall appoint, as conciliator with respect to the dispute, a person who is well known in the community as being impartial to both labor and industry, and shall so notify the board. The position of conciliator shall not be subject to ~~[chapter]~~ chapters 76[, but the compensation thereof shall be determined pursuant to chapter 77-] and 89.

Upon receipt of notice of the appointment of a conciliator, the board shall forthwith refer the dispute to the conciliator. The conciliator shall use the conciliator's best efforts to terminate the dispute by conciliation within the ten days immediately succeeding the reference of the dispute to the conciliator or within such additional time, not to exceed ten days, as is agreed upon by all parties to the dispute. If, within the ten days, or the additional time, if any, the conciliator succeeds in terminating the dispute by conciliation, the conciliator shall immediately certify such fact to the board and the conciliator's appointment shall then end. If, within the ten days, or the additional time, if any, the conciliator fails to terminate the dispute by conciliation, the conciliator shall immediately certify such fact to the board and the conciliator's appointment shall then end. Upon the termination of the appointment of the conciliator, the board shall so notify the governor.”

SECTION 43. Section 608-1, Hawaii Revised Statutes, is amended to read as follows:

**“§608-1 Personnel and expenses of circuit courts.** The State shall pay the expenses of the several circuit courts and the salaries of such officers and employees as may be required by such courts, including without prejudice to the generality of the foregoing, expenses of the family courts and agencies thereof. The judge or judges of the several circuit courts shall appoint such officers and employees as may be required by the courts and for which appropriations have been made by the legislature; provided that the officers and employees of the family court of the first circuit, including without prejudice to the generality of the foregoing probation officers, truant officers, and personnel of the detention home, shall be appointed by the judge of the family court under whose supervision the appropriations for the division shall be expended. Except as otherwise provided, the officers and employees shall be members of the civil service system of the State and shall be ~~[chosen in conformity with part II of chapter 76, and the compensation for and classification of the positions held by such persons shall be in accordance with part I of chapter 77-]~~ subject to chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule.”

SECTION 44. Section 608-2, Hawaii Revised Statutes, is amended to read as follows:

**“§608-2 District court, salaries, expenses, etc.** The salaries of the district judges, clerks, and other assistants and the expenses of the district judges shall be paid by the State. The judges shall have power to appoint such additional officers or employees as may be required by the courts and for which appropriations have been made by the legislature. Except as otherwise provided, such officers and employees

shall be subject to ~~[part II of]~~ chapter 76 and ~~[part I of chapter 77.]~~ the appropriate collective bargaining agreement, executive order, executive directive, or rule.”

SECTION 45. Section 612-51, Hawaii Revised Statutes, is amended to read as follows:

**“§612-51 Grand jury counsel; appointment and removal.** The chief justice of the state supreme court shall appoint one or more grand jury counsel for the four judicial circuits of the State, without regard to chapters 76~~[-77,]~~ and 89. Right to removal shall rest with the chief justice.”

SECTION 46. Section 802-11, Hawaii Revised Statutes, is amended to read as follows:

**“§802-11 Appointment of state public defender.** The state public defender shall be appointed by the defender council without regard to chapters 76~~[-77,]~~ and 89. The state public defender’s appointment shall be for a term of four years except as otherwise provided herein, and until the state public defender’s successor is appointed and qualified. The state public defender shall be qualified to practice law before the supreme court of this State. Effective January 1, 1989, and January 1, 1990, the salary of the state public defender shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively. The state public defender shall devote full time to the performance of the state public defender’s duties and shall not engage in the general practice of law.”

SECTION 47. Section 846-21, Hawaii Revised Statutes, is amended to read as follows:

**“§846-21 Authority of attorney general.** The attorney general shall carry out this part. In conformity with chapter 76, the attorney general may appoint such subordinates, at such compensation, within the limits of available appropriations therefor ~~[and in conformity with chapter 77],~~ or without compensation, as may be necessary or proper to carry out this part, and, the attorney general may delegate to such subordinates such of the attorney general’s powers and duties as may be necessary for the efficient administration of this part.”

SECTION 48. Section 202 of the Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

**“(b)** The provisions of section 76-16, Hawaii Revised Statutes, shall apply to the positions of first deputy and private secretary to the chairman of the commission. The department may hire temporary staff on a contractual basis not subject to chapters 76~~[-77,]~~ and 78, Hawaii Revised Statutes, when the services to be performed will assist in carrying out the purposes of the Act. These positions may be funded through appropriations for capital improvement program projects and by the administration account, operating fund, or native Hawaiian rehabilitation fund. No contract shall be for a period longer than two years, but individuals hired under contract may be employed for a maximum of six years; provided that the six-year limitation shall not apply if the department, with the approval of the governor, determines that such contract individuals are needed to provide critical services for the efficient functioning of the department. All other positions in the department shall be subject to ~~[chapters]~~ chapter 76 ~~[and 77]~~, Hawaii Revised Statutes.

All ~~[vacancies]~~ vacant and new civil service positions ~~[which are]~~ covered by ~~[chapters]~~ chapter 76 ~~[and 77]~~, Hawaii Revised Statutes, shall be filled in accordance with ~~[sections 76-23 and 76-31,]~~ section 76-22.5, Hawaii Revised Statutes~~[-,]~~ pro-



vided that the provisions of these sections shall be applicable first to qualified persons of Hawaiian extraction.”

SECTION 49. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 50. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

## ACT 149

H.B. NO. 2512

A Bill for an Act Relating to the Public Health Nursing Services Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there is a critical need for comprehensive case management services for medically fragile children as defined by the early and periodic screening, diagnosis, and treatment medicaid program administered by the department of human services. Due to the lack of certified agencies in the communities to provide the services, the department of human services has requested that the public health nursing branch program of the department of health become a provider of last resort and receive and expend medicaid reimbursements for these services. This request is made because of the branch’s history and experiences with collaboration, coordination, transition, and family involvement in meeting the needs of vulnerable populations. Public health nurses are already providing these case management services because of the unavailability of certified case management agencies.

The purpose of this Act is to establish the public health nursing services special fund for early and periodic screening, diagnosis, and treatment case management services for families of medically fragile children below age twenty-one by maximizing federal reimbursement and facilitating access to a broad array of services essential to maintain this vulnerable population in the community. Medicaid reimbursements for the case management services will be deposited into the special fund. Moneys from the special fund will be used to provide ongoing case management services and to provide training in case management services for staff to meet the needs of the families of medically fragile children.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### “PART . PUBLIC HEALTH NURSING SERVICES SPECIAL FUND

**§321- Definitions.** As used in this part, unless the context clearly requires otherwise:

“Case management services” means services that assist medically fragile children under the medicaid state plan in gaining access to needed medical, social, educational, and other services.

“Medically fragile children” means children under the age of twenty-one with complex medical conditions that may or may not require technological interventions, including but not limited to ventilator care, tracheostomy care, catheterizations, parenteral nutrition, complex enteral feeding, and complex wound care.

**§321- Public health nursing services special fund.** (a) There is established within the state treasury a special fund to be known as the public health nursing services special fund. The special fund shall be administered and expended by the department of health in accordance with this section.

(b) The department shall expend the special funds to provide ongoing case management services and to provide staff training in case management services in collaboration with the department of human services' medicaid early and periodic screening, diagnosis, and treatment program, including but not limited to:

- (1) Assessment of children who are medically fragile to determine service needs;
- (2) Development of a specific care plan;
- (3) Referral for and linkages to services to implement the specific care plan; and
- (4) Monitoring and follow-up.

(c) The special fund shall consist of medicaid reimbursements received by the department for case management services provided to families of medically fragile children."

SECTION 3. There is appropriated out of the public health nursing services special fund the sum of \$90,720 or so much thereof as may be necessary for fiscal year 2002-2003 for case management services provided to families of medically fragile children.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

## ACT 150

H.B. NO. 2523

A Bill for an Act Relating to Emergency Medical Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-230, Hawaii Revised Statutes, is amended to read as follows:

**“§321-230 Technical assistance, data collection, evaluation.** The department of health may contract for technical assistance and consultation, including but not limited to categorization, data collection, and evaluation appropriate to the needs of the state system. The collection and analysis of statewide emergency medical services data, including pediatrics, trauma, cardiac, medical, and behavioral medical emergencies is for the purpose of improving the quality of services provided.

The department of health may implement and maintain a trauma registry for the collection of information concerning the treatment of critical trauma patients at state designated trauma centers and carry out a system for the management of that information. The system may provide for the recording of information concerning treatment received before and after a trauma patient's admission to a hospital or medical center. All state designated trauma centers shall submit to the department of health periodic reports of each patient treated for trauma in the state system in such manner as the department shall specify.

## ACT 151

For the purposes of this section, “categorization” means systematic identification of the readiness and capabilities of hospitals and their staffs to adequately, expeditiously, and efficiently receive and treat emergency patients.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 2002.)

## ACT 151

H.B. NO. 2536

A Bill for an Act Relating to Section 17 of Act 85, Session Laws of Hawaii 1999.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 85, Session Laws of Hawaii 1999, is amended by amending section 17 to read as follows:

~~“SECTION 17. This Act shall take effect upon its approval [and shall be repealed on June 30, 2002; provided that all sections of the Hawaii Revised Statutes that are amended or repealed by this Act shall be reenacted in the form in which they read on the day before the effective date of this Act].”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect on June 29, 2002.

(Approved June 7, 2002.)

## ACT 152

H.B. NO. 2552

A Bill for an Act Relating to the Definition of Landowner for Safe Harbor Agreements and Habitat Conservation Plans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 195D-2, Hawaii Revised Statutes, is amended by amending the definition of “landowner” to read as follows:

““Landowner” means the owner of the fee simple interest in private land[;] and may include public lands limited to the following projects:

- (1) North-South Road, Ewa, Oahu, project no. HWY-0-01-92 as described in the draft environmental assessment, September 1998; and the project described as Kapolei Parkway, Ewa, Oahu, project no. E-13 of the Oahu Regional Transportation Plan adopted by the Oahu metropolitan planning organization on April 6, 2001;
- (2) Cyanotech Corporation, incidental take permit and habitat conservation plan as described in the Federal Register, January 2, 2002 (volume 67, number 1); and
- (3) Kealakehe planned community proposed by the housing and community development corporation of Hawaii and the department of Hawaiian home lands on lands within tax map key numbers 7-4-8: parcel 17, 7-4-8: portion 12, 7-4-8: parcel 43, and 7-4-19: portion 43.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 2002.)

**ACT 153**

H.B. NO. 2568

A Bill for an Act Relating to the Collection of Taxes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to assist the department of taxation in the collection of state taxes by:

- (1) Expanding the department's current authority to ascertain the fair market value of sales between affiliated companies or persons when the consideration paid is not indicative of the fair market value of sales and all taxes administered under title 14, Hawaii Revised Statutes;
- (2) Providing a continuous levy on the salary or wages of a delinquent taxpayer;
- (3) Indemnifying a person from the claims of third parties when the person honors a state tax levy; and
- (4) Expanding the authority for recovering unpaid withholding taxes.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231- Consideration paid not indicative of fair market value.** Where sales are made by a taxpayer, taxable under title 14, to other affiliated companies or persons, or under other circumstances where the relation between the taxpayer and the buyer is such that the consideration paid, if any, is not indicative of the fair market value, the taxpayer shall pay the taxes imposed under title 14, measured by the fair market value, corresponding as nearly as possible to the gross proceeds of sales of like quality and character by other persons, where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar. If no such comparable sales exist between nonaffiliated buyers and sellers, the department may prescribe equitable and uniform rules for ascertaining the fair market value of the sale.

As used in this section, “affiliated companies or persons” means two or more organizations, trades, or businesses (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests, including companies or persons described in section 237-23.5.”

SECTION 3. Section 231-25, Hawaii Revised Statutes, is amended to read as follows:

**“§231-25 Payment, enforcement of by assumpsit action or by levy and distraint upon all property and rights to property.** (a) If any tax be unpaid when due, the director of taxation may proceed to enforce the payment of the same, with all penalties, as follows:

- (1) By action in assumpsit, in the director's own name, on behalf of the State, for the amount of taxes and costs, or, if the tax is delinquent, for

the amount of taxes, costs, penalties, and interest, in any district court, irrespective of the amount claimed. Execution may issue upon any judgment rendered in any such action which may be satisfied out of any real or personal property of the defendant~~[-]; and~~

- (2) By levy upon all property and rights to property (except such property as is exempt under ~~[paragraph (b)(5) of this section]~~ subsection (b)(6)) belonging to such taxpayer or on which there is a lien, as the director may deem sufficient to satisfy the payment of taxes due, penalties and interest if any, and the costs and expenses of the levy.

(b) The following rules are applicable to the levy as provided for in ~~[paragraph]~~ subsection (a)(2):

- (1) Seizure and sale of property. The term "levy" as used in this section includes the power of distraint and seizure by any means. [A] Except as provided in paragraph (2), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the director or the director's representative may levy upon property or ~~[right]~~ rights to property, the director may seize and sell the property or rights to property (whether real or personal, tangible or intangible);
- (2) The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date the levy is first made until the levy is released. The levy on salary or wages shall attach to twenty-five per cent of any salary or wages payable or received by the taxpayer;

- ~~[(2)]~~ (3) Successive seizures. Whenever any property or ~~[right]~~ rights to property upon which levy has been made is not sufficient to satisfy the claim of the State for which levy is made, the director or the director's representative, thereafter, and as often as may be necessary, may proceed to levy in like manner upon any other property liable to levy of the person against whom a claim exists, until the amount due from the person, together with all expenses, is fully paid;

- ~~[(3)]~~ (4) Surrender of property subject to levy.

(A) Requirement. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made, upon demand of the director or the director's representative, shall surrender the property or rights (or discharge the obligation) to the director or the director's representative, except that part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process;

(B) Extent of personal liability. Any person who fails or refuses to surrender property or rights to property, subject to levy, upon demand by the director or the director's representative, shall be liable in the person's own person and estate to the State in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which the levy has been made, together with costs and interest on the sum at the rate of eight per cent a year from the date of the levy. Any amount (other than costs) recovered under this subparagraph shall be credited against the tax liability for the collection of which the levy was made;

(C) Penalty for violation. In addition to the personal liability imposed by subparagraph (B), if any person required to surrender property or rights to property fails or refuses to surrender the property or rights to property without reasonable cause, the person shall be

liable for a penalty equal to fifty per cent of the amount recoverable under subparagraph (B). No part of the penalty shall be credited against the tax liability for the collection of which the levy was made;

- (D) Effect of honoring levy. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the director or the director's representative, surrenders the property or rights to property (or discharges the obligation) to the director or the director's representative (or who pays a liability under subparagraph (B)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to the property or rights to property arising from the surrender or payment; and
- (E) Person defined. The term "person," as used in subparagraph (A), includes an officer or employee of a corporation or a member or employee of a partnership, who as an officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation;
- [4] (5) Production of books. If a levy has been made or is about to be made on any property, or ~~[right]~~ rights to property, any person having custody or control of books or records, containing evidence or statements relating to the property or ~~[right]~~ rights to property subject to levy, upon demand of the director or the director's representative, shall exhibit those books or records to the director or the director's representative;
- [5] (6) Property exempt from levy. Notwithstanding any other law of the State, no property or rights to property shall be exempt from levy other than the following:
  - (A) Wearing apparel and school books. Those items of wearing apparel and those school books that are necessary for the taxpayer or for members of the taxpayer's family;
  - (B) Fuel, provisions, furniture, and personal effects. If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$500 in value;
  - (C) Books and tools of a trade, business, or profession. So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$250 in value;
  - (D) Unemployment benefits. Any amount payable to an individual with respect to the individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States or the State; and
  - (E) Undelivered mail. Mail, addressed to any person, which has not been delivered to the addressee; and
- [6] (7) Sale of the seized property.
  - (A) Notice of sale. The director shall take possession and keep the levied property until the sale. After taking possession, the director shall sell the taxpayer's interest in the property at public auction after first giving fifteen days' public notice of the time

- and place of the sale in the district, and by posting the notice in at least three public places in the district where the sale is to be held;
- (B) Assistance in seizure and sale. The director may require the assistance of any sheriff or authorized police officer of any county to aid in the seizure and sale of the levied property. The director may further retain the services of any person competent and qualified to aid in the sale of the levied property, provided that the consent of the delinquent taxpayer is obtained. Any sheriff or the person so retained by the director shall be paid a fair and reasonable fee but in no case shall the fee exceed ten per cent of the gross proceeds of the sale. Any person other than a sheriff so retained by the director to assist the director may be required to furnish bond in an amount to be determined by the director. The fees and the cost of the bond shall constitute a part of the costs and expenses of the levy;
  - (C) Time and place of sale. The sale shall take place within thirty days after seizure; provided that by public announcement at the sale, or at the time and place previously set for the sale, it may be extended for one week. Any further extension of the sale shall be with the consent of the delinquent taxpayer. The sale, in any event, shall be completed within forty-five days after seizure of the property;
  - (D) Manner and conditions of sale. Sufficient property shall be sold to pay all taxes, penalties, interest, costs, and expenses. On payment of the price bid for any property sold, the delivery thereof with a bill of sale from the director shall vest the title of the property in the purchaser. No charge shall be made for the bill of sale. All surplus received upon any sale after the payment of the taxes, penalties, interest, costs, and expenses, shall be returned to the owner of the property sold, and until claimed shall be deposited with the department subject to the order of the owner. Any unsold portion of the property seized may be left at the place of sale at the risk of the owner; and
  - (E) Redemption of property. If the owner of the property seized desires to retain or regain possession thereof, the owner may give a sufficient bond with surety to produce the property at the time and place of sale, or pay all taxes, penalties, interest, costs, and expenses."

SECTION 4. Section 235-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the liability imposed by subsection (a), if any employer [~~which is a corporation~~] fails, neglects, or refuses to deduct and withhold from the wages paid to any employee, or to pay over, the amount of tax required, any person [~~or corporate officer~~] excluding those who have only ministerial duties, who is under a duty [~~to the corporation~~] to deduct and withhold or to pay over, the amount of tax required, and who wilfully fails to perform such duty, shall be liable to the State for the amount of the tax. The liability may be assessed and collected in the same manner as the liability imposed by subsection (a); provided that two or more persons may be assessed under this subsection jointly or in the alternative, but the tax shall be collected only once with respect to the same wages. The voluntary or involuntary dissolution of the [~~corporation,~~] employer, or the withdrawal and surrender of its right to engage in business within this State shall not discharge the liability hereby imposed."

SECTION 5. Section 237-19, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that:

- (1) Section 3 is applicable to a levy made on or after July 1, 2002; and
- (2) Section 4 is applicable to withholding requirements for payroll periods beginning on or after July 1, 2002.

(Approved June 7, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 154**

S.B. NO. 2708

A Bill for an Act Relating to the Housing and Community Development Corporation of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to stimulate the development of affordable housing by waiving the housing and community development corporation of Hawaii's three-year buyback provision until December 31, 2004, at which time the buyback returns to ten years.

SECTION 2. Section 201G-127, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-127 Real property; restrictions on transfer; waiver of restrictions.** (a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (1) For a period of three years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum of:
  - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
  - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
  - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year.
- (2) The corporation may purchase the real property either:
  - (A) By conveyance free and clear of all mortgages and liens; or
  - (B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien



created for any other purpose; provided that the corporation has previously consented to it in writing.

The corporation's interest created by this subsection shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (ii) Any mortgage insured or held by a federal housing agency; and
- (iii) Any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.

- (3) A purchaser may refinance real property developed and sold under this chapter; provided that the purchaser shall not refinance the real property, within three years from the date of purchase, for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C).
- (4) After the end of the third year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:
  - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
  - (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as cost under section 201G-125 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
  - (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of the agreement of sale, of the real property; and provided further that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under paragraphs (1) and (2); and
  - (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable; and
- (5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time.

(b) For a period of three years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to

the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201G-112, and upon the terms that preserve the intent of this section and sections 201G-129 and 201G-130, and in accordance with rules adopted by the corporation.

(c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:

- (1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or
- (2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in section 201G-112; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91 when applicable.

(d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.

(e) The restrictions prescribed in this section and sections 201G-129 to 201G-131 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of:

- (1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and
- (2) Any intention of the mortgagee to foreclose the mortgage under chapter 667;

provided that the mortgagee's failure to provide written notice to the corporation shall not affect the holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

(f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(4)(B), a description of the cost items that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.

(g) This section need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the

units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

(i) Notwithstanding section 201G-130, the corporation is authorized but not required to waive the buyback restrictions set forth in subsections (a) and (b) until December 31, 2004, at which time the authority to waive the buyback restriction is repealed.’’

SECTION 3. Section 201G-129, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-129 Real property; restrictions on use.** (a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the three-year restriction period set forth in section 201G-127, except in hardship circumstances where the inability to reside on the property arises out of unforeseeable job or military transfer, a temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case-by-case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than three years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

- (1) Application and approval procedures for the waivers;
- (2) Exceptions authorized by this subsection;
- (3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
- (4) Schedules of fees needed to cover administrative expenses and attorneys’ fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section 201G-127. Any person who disagrees with the corporation’s determination under this section shall be entitled to a contested case proceeding under chapter 91.

(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in ~~[subsection]~~ section 201G-127(a)(1), (2), or (4), as applicable.

(c) Any deed, lease, agreement of sale, or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.

(d) The restrictions prescribed in subsection (a) shall terminate and shall not attach in subsequent transfers of title if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(e) Subsections (a) to (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

(g) Subsection (a) may be waived until December 31, 2004. Notwithstanding section 201G-130, the waiver shall apply to all real property sold and purchased from the effective date of this subsection.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that on December 31, 2004, the amendments in sections 2 and 3 of this Act shall be repealed and sections 201G-127 and 201G-129, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of Act 99, Session Laws of Hawaii 2001.

(Approved June 7, 2002.)

## ACT 155

S.B. NO. 2733

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend chapters 431 to 435C, Hawaii Revised Statutes (HRS), and the producer licensing act adopted by the 2001 legislature (Act 216, Session Laws of Hawaii 2001, recodified as article 9A of chapter 431, (HRS)) to bring the insurance laws and the Act into conformity with each other. The producer licensing act and the insurance laws contain certain inconsistent terms and provisions. Therefore, to increase consistency and accuracy, this Act amends statutory language in various sections of chapters 431 to 435C, HRS, moves applicable provisions from article 9 of chapter 431, HRS, to new sections in article 9A of chapter 431, HRS, and repeals sections 431:9-214 and 431:9-301 to 431:9-305, HRS.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

### “ARTICLE MANAGING GENERAL AGENTS

**§431: -101 Definitions.** For purposes of this article:

“Actuary” means a person who is a member in good standing of the American Academy of Actuaries.

“Insurer” means any person, firm, association, or corporation duly licensed in this State as an insurance company pursuant to section 431:3-201.

“Managing general agent” means any person, firm, association, or corporation that manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office) and acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five per cent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year, together with one or more of the following activities related to the business produced: adjusts or pays claims in excess of an amount determined by the commissioner, or negotiates reinsurance on behalf of the insurer. Notwithstanding the preceding sentence, the following persons shall not be considered as managing general agents for the purposes of this article:

- (1) An employee of the insurer;
- (2) A United States manager of the United States branch of an alien insurer;
- (3) An underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to article 11, and whose compensation is not based on the volume of premiums written;
- (4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under a power of attorney; and
- (5) Any person, firm, association, or corporation domiciled in the State and authorized to do business only in the State and acting as a managing general agent for an insurer licensed and conducting business only in the State.

“Underwrite” means the authority to accept or reject risk on behalf of the insurer.

**§431: -102 Licensure.** (a) No person, firm, association, or corporation shall act as a managing general agent, with respect to risks located in this State for an insurer licensed in this State, unless licensed as a producer in this State.

(b) No person, firm, association, or corporation shall act as a managing general agent, representing an insurer domiciled in this State with respect to risks located outside this State, unless licensed as a producer in this State.

(c) The commissioner may require the managing general agent to furnish a bond in an amount acceptable to the commissioner with an insurance company acceptable to the commissioner for the protection of the insurer.

(d) The commissioner may require the managing general agent to maintain an errors and omissions policy in an amount acceptable to the commissioner with an insurance company acceptable to the commissioner.

**§431: -103 Required contract provisions.** No person, firm, association, or corporation acting as a managing general agent shall place business with an insurer unless there is in force, a written contract between the managing general agent and the insurer which sets forth the responsibilities of each party and, where both the managing general agent and the insurer share responsibility for a particular function, specifies the division of those responsibilities, and which contains at least the following additional provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

- (2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of an insurer shall be held by the managing general agent in a fiduciary capacity and deposited in an account in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer by the managing general agent. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the managing general agent shall be maintained in the licensee's office. The insurer shall have access to and the right to copy all accounts and records of the managing general agent related to the insurer's business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Records shall be in an organized form according to each class of insurance and shall include the following information to the extent it is applicable:
  - (A) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance;
  - (B) The names of any other licensees from whom business is accepted and the names of persons to whom commissions or allowances of any kind are promised or paid;
  - (C) A record of each investigation or adjustment undertaken or consummated and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of the investigation or adjustment;
  - (D) A record of each bill reviewed and a statement of any fee, commission, or other compensation received or to be received by the independent bill reviewer on account of the bill reviewed; and
  - (E) Any additional information as shall be customary or as may reasonably be required by the commissioner.

This section shall not apply to life or disability insurance if the records required of such insurance are customarily maintained in the offices of the insurer;

- (5) The contract may not be assigned in whole or in part by the managing general agent;
- (6) Appropriate underwriting guidelines including:
  - (A) The maximum annual premium volume;
  - (B) The basis of the rates to be charged;
  - (C) The types of risks which may be written;
  - (D) Maximum limits of liability;
  - (E) Applicable exclusions;
  - (F) Territorial limitations;
  - (G) Policy cancellation provisions; and
  - (H) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies;

- (7) If the contract permits the managing general agent to settle claims on behalf of the insurer:
  - (A) All claims shall be reported to the insurer in a timely manner;
  - (B) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
    - (i) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;
    - (ii) Involves a coverage dispute;
    - (iii) May exceed the managing general agent's claims settlement authority;
    - (iv) Is open for more than six months; or
    - (v) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less;
  - (C) All claim files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate; provided that the managing general agent shall have reasonable access to and the right to copy the files on a timely basis;
  - (D) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination; and
  - (E) Where electronic claims files are in existence, the contract shall address the timely transmission of the data;
- (8) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and, in any event, not until the profits have been verified through examination pursuant to section 431: -105; and
- (9) The managing general agent shall not:
  - (A) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with whom those automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
  - (B) Commit the insurer to participate in insurance or reinsurance syndicates;
  - (C) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;
  - (D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which

- shall not exceed one per cent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
- (E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;
- (F) Permit its subagent to serve on the board of directors of the insurer;
- (G) Employ an individual who is employed by the insurer also; or
- (H) Appoint a sub-managing general agent.

**§431: -104 Duties of insurers.** (a) An insurer shall have on file an independent financial examination of each managing general agent with whom it has done business in a form acceptable to the commissioner.

(b) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an independent actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification required by this chapter.

(c) The insurer shall conduct at least semiannually an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

(e) The insurer shall notify the commissioner in writing within thirty days of entering into or terminating a contract with a managing general agent. Notices of appointment of a managing general agent shall include a statement of duties which the managing general agent is expected to perform on behalf of the insurer, the lines of insurance for which the managing general agent is to be authorized to act, and any other information the commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any producer, as defined in section 431:11A-101, has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the commissioner of the determination and the insurer and producer shall fully comply with this article within thirty days.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of any of its managing general agents; provided that this subsection shall not apply to relationships governed by article 11.

**§431: -105 Examination authority.** The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined pursuant to article 2 as if the managing general agent was the insurer.

**§431: -106 Penalties and liabilities.** (a) If after a hearing conducted in accordance with section 431:2-308 and chapter 91, the commissioner finds that any person has violated any provision of this article, the commissioner may order any or all of the following:

- (1) For each separate violation, a fine in an amount not less than \$500 and not more than \$50,000, pursuant to section 431:3-221;
- (2) Revocation or suspension of the managing general agent's license; and



- (3) The managing general agent to reimburse the insurer or the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter by the managing general agent.
- (b) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties as provided by law.
- (c) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

**§431: -107 Rules.** The commissioner may adopt rules in accordance with chapter 91 to effectuate the purposes of this article.”

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 9A four new sections to be appropriately designated and to read as follows:

**“§431:9A-A Limited license.** (a) Notwithstanding any other provision of this article, the commissioner may issue:

- (1) A limited license to persons selling travel tickets of a common carrier of persons or property who shall act only as to travel ticket policies of disability insurance or baggage insurance on personal effects;
  - (2) A limited license to each individual who has charge of vending machines used in this State for the effectuation of travel insurance;
  - (3) A limited license to any individual who sells policies of disability insurance as a promotional device to improve the circulation of a newspaper in this State;
  - (4) A limited license to creditors for the purposes of enrolling debtors under a group credit life insurance or group credit disability insurance policy, issuing certificates of insurance pursuant thereto, or issuing individual credit life insurance or credit disability insurance policies to debtors; or
  - (5) A limited credit insurance license to any individual who sells policies of individual or group credit life, credit accident and health, credit involuntary unemployment, or credit property insurance; provided the individual satisfactorily passes a pre-licensing examination that is limited to the kinds of insurance marketed through creditors.
- (b) The commissioner may prescribe and furnish forms calling for any information that the commissioner deems proper in connection with the application for or extension of these limited licenses.
- (c) The limited license shall not be issued until the license fee has been paid.

**§431:9A-B Process against nonresident licensees.** (a) Each licensed non-resident producer shall appoint the commissioner as the producer’s agent to receive service of legal process issued against the producer in this State upon causes of action arising within this State. Service upon the commissioner as agent shall constitute effective legal service upon the producer.

(b) The appointment shall be irrevocable for as long as there could be any cause of action against the producer arising out of the producer’s insurance transactions in this State.

(c) Service of process on the commissioner shall be made in accordance with section 431:2-206.

**§431:9A-C Reporting and accounting for premiums.** (a) Every licensed producer shall have the responsibilities of a trustee for all premium and return premium funds received or collected under this article.

(b) The licensee, upon receipt of the funds, shall either:

- (1) Remit the premiums (less commissions) and return premiums received or held by the licensee to the insurers or the persons entitled to such funds; or
- (2) Maintain the funds at all times in a federally insured account with a bank, savings and loan association, or financial services loan company situated in Hawaii, separate from the licensee's own funds or funds held by the licensee in any other capacity, in an amount at least equal to the premiums (net of commissions) and return premiums received by such licensee and unpaid to the insurers or persons entitled to such funds. Return premiums shall be returned within thirty days, unless directed otherwise in writing by the person entitled to the funds. The licensee shall not be required to maintain a separate bank account or other account for the funds of each insurer or person entitled to such funds, if and so long as the funds held for the insurer or person entitled to such funds are reasonably ascertainable from the books of account and records of the licensee. Only such additional funds as may be reasonably necessary to pay bank, savings and loan association, or financial services loan company charges may be commingled with the premium funds. If the bank, savings and loan association, or financial services loan company account is an interest earning account, the licensee may not retain the interest earned on such funds for the licensee's own use or benefit without the prior written consent of the insurers or person entitled to such funds. A premium trustee account shall be designated on the records of the bank, savings and loan association, or financial services loan company as a "trustee account established pursuant to section 431:9A-C, Hawaii Revised Statutes", or words of similar import.

(c) Any such licensee who, not being lawfully entitled to such funds, diverts or appropriates such funds or any portion of them to the licensee's own use, shall be subject to any penalties as provided by law.

**§431:9A-D Controlled business.** (a) The commissioner shall neither grant nor extend a producer's license to any person if the commissioner has reasonable cause to believe that:

- (1) In the case of an application for license extension, during either of the two calendar years immediately preceding the extension date of the license, the aggregate amount of premiums on insurance represented by controlled business exceeded the aggregate amount of premiums on all other insurance business of the licensee; or
- (2) The circumstances of the applicant for license issuance or extension are such as to cause the commissioner reasonably to believe that during the twelve-month period that would immediately follow the issuance or extension of the license, if granted, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant.

(b) "Controlled business" means insurance procured or to be procured by or through a licensee upon:

- (1) The licensee's own life, person, property, or risks, or those of the licensee's immediate family; or
- (2) The life, person, property, or risks of the licensee's employer or partnership, of which the licensee or a member of the licensee's immediate family is an officer, director, substantial stockholder, partner, associate, or employee."

SECTION 4. Section 431:1-203, Hawaii Revised Statutes, is amended to read as follows:

**“§431:1-203 Classes of insurance.** For the purposes of this code, the classes of insurance are: life insurance (including industrial and group life insurance)[;] as defined in section 431:1-204; accident and health or sickness insurance, also referred to as disability insurance (including group disability insurance)[;], as defined in section 431:1-205; property insurance[;] as defined in section 431:1-206; marine and transportation insurance[;] as defined in section 431:1-207; vehicle insurance[;] as defined in section 431:1-208; general casualty insurance[;] as defined in section 431:1-209; surety insurance[;] as defined in section 431:1-210; and such other classes as may be authorized by law.”

SECTION 5. Section 431:1-205, Hawaii Revised Statutes, is amended to read as follows:

**“§431:1-205 [Disability] Accident and health or sickness insurance defined.** [Disability] Accident and health or sickness insurance, also referred to as [~~accident and sickness~~] disability insurance, is insurance against bodily injury, disablement, or death by accident, or accidental means, or the expense thereof; against disablement or expense resulting from sickness; and every insurance appertaining thereto[;], including health and medical insurance.”

SECTION 6. Section 431:1-209, Hawaii Revised Statutes, is amended to read as follows:

**“§431:1-209 General casualty insurance defined.** General casualty insurance includes vehicle insurance as defined in section 431:1-208, [disability] accident and health or sickness insurance as defined in section 431:1-205, and in addition is insurance:

- (1) Against legal liability for the death, injury, or disability of any human being, or from damage to property;
- (2) Of medical, hospital, surgical, and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings;
- (3) Of the obligation accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury to employees;
- (4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt of any of the foregoing; also insurance against loss or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers or documents, resulting from any cause, except while in the mail;
- (5) Upon personal effects of individuals, by an all-risk type of policy commonly known as the personal property floater;
- (6) Against loss or damage to glass and its appurtenances resulting from any cause;
- (7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

- (8) Against loss of or damage to any property of the insured resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire;
- (9) Against loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes, or containers, or by water entering through leaks or openings in buildings;
- (10) Against loss or damage resulting from failure of debtors to pay their obligations to the insured (credit insurance);
- (11) Against loss of or damage to any domesticated or wild animal resulting from any cause (livestock insurance);
- (12) Against loss of or damage to any property of the insured resulting from collision of any other object with such property, but not including collision to or by vessels, craft, piers, or other instrumentalities of ocean or inland navigation (collision insurance);
- (13) Against legal liability of the insured, and against loss, damage, or expense incident to a claim of such liability, and including any obligation of the insured to pay medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the result of negligence in rendering expert, fiduciary, or professional service (malpractice insurance);
- (14) Against any contract of warranty or guaranty which promises service maintenance, parts replacement, repair, money, or any other indemnity in the event of loss of or damage to a motor vehicle or any part thereof from any cause, including loss of or damage to or loss of use of the motor vehicle by reason of depreciation, deterioration, wear and tear, use, obsolescence, or breakage if made by a warrantor or guarantor who or which as such is doing an insurance business; provided that service contracts, as defined and meeting the requirements of chapter 481X, shall not be subject to chapter 431.

The doing or proposing to do any business in substance equivalent to the business described in this section in a manner designed to evade the provisions of this section is the doing of an insurance business; and

- (15) Against any other kind of loss, damage, or liability properly the subject of insurance and not within any other class or classes or type of insurance as defined in section 431:1-204 to ~~[section]~~ 431:1-211, if such insurance is not contrary to law or public policy.”

SECTION 7. Section 431:3-212, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-212 Application for authority.** To apply for an original certificate of authority, an insurer shall:

- (1) File with the commissioner its request showing:
  - (A) Its name, home office location, type of insurer, organization date, and state or country of its domicile; and name and location of principal office of its attorney-in-fact if a reciprocal insurer[-];
  - (B) The classes of insurance it proposes to transact[-]; and
  - (C) Additional information as the commissioner may reasonably require.
- (2) File with the commissioner:

- (A) A copy of its charter as amended; or such copy certified by the proper public officer of the state or country of domicile if a foreign or alien insurer[-];
  - (B) A copy of its bylaws as amended, certified by its proper officer[-];
  - (C) A copy of its annual statement as of December 31 last preceding[-];
  - (D) An appointment of the commissioner as its attorney to receive service of legal process, if a foreign or alien insurer, or a domestic reciprocal insurer. The name and business address of its authorized resident agent upon whom process may be served in all cases, if a foreign or alien insurer[-];
  - (E) A copy of the appointment and authority of its United States manager, certified by its proper officer, if an alien insurer[-];
  - (F) A certificate from the proper public official of its state or country of domicile showing that it is duly organized and is authorized to transact the classes of insurance proposed to be transacted, if a foreign or alien insurer[-];
  - (G) The declaration required by section 431:4-409 if a domestic reciprocal insurer[-];
  - (H) Certificate of the proper public official as to any deposit made or held in compliance with this code[-];
  - (I) Copy of report of the last examination made of the insurer certified by the insurance supervisory official of its state of domicile or entry into the United States, if a foreign or alien insurer[-];
  - (J) Certificate of appointment of [general agent] producer; and
  - (K) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with this code.
- (3) Deposit with the commissioner the appropriate fees required by this code.”

SECTION 8. Section 431:3-212.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The certificate of authority, [agent] producer appointments and licenses, rates, and other items allowed by the commissioner, which are in existence at the time an insurer authorized to transact insurance business in this State transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon such transfer if the insurer remains qualified to transact insurance business in this State. For purposes of this section, an insurer transferring its corporate domicile to this State remains qualified to transact insurance business in this State if it meets the organization and licensing requirements applicable to the same type of domestic insurer. All outstanding policies of a transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.”

SECTION 9. Section 431:3-215, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The insurer shall return for cancellation its current certificate of authority and licenses for [general agents] producers issued by the commissioner.”

SECTION 10. Section 431:4-307, Hawaii Revised Statutes, is amended to read as follows:

**“§431:4-307 Mutual [disability] accident and health or sickness insurer.**

(a) When applying for a certificate of authority, a domestic mutual [disability] accident and health or sickness insurer ~~must~~ shall:

- (1) Have at least five hundred applications from at least five hundred persons for individual [disability] accident and health or sickness insurance providing not more than \$1,000 of accidental death benefit and not more than \$25 of weekly indemnity for each applicant; ~~and~~
  - (2) Have collected from each applicant the proper premium for one year, and have so received from all applicants premiums aggregating at least \$25,000; and
  - (3) Have a surplus over all liabilities, as at completion of issuance of the insurance contracts so applied for, amounting to not less than \$450,000.
- (b) In lieu of the applications, premiums, and surplus, it is required to have a surplus amounting to not less than \$675,000 over all liabilities.”

SECTION 11. Section 431:5-201, Hawaii Revised Statutes, is amended to read as follows:

**“§431:5-201 Qualified assets.** In any determination of the financial condition of an insurer, only such assets as are owned by the insurer, and which consist of the following may be used:

- (1) Cash in the possession of the insurer or in transit under its control, and the true positive balance of any deposit of the insurer in a solvent bank or trust company;
- (2) Investments, securities, properties, and secured loans acquired or held in accordance with article 6, and in connection therewith the following items:
  - (A) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.
  - (B) Declared and unpaid dividends on stocks and shares unless the amount has otherwise been allowed as an asset.
  - (C) Interest due or accrued upon a collateral loan in an amount not to exceed six months’ interest thereon.
  - (D) Interest due or accrued on:
    - (i) Deposits in solvent banks, trust companies, and financial investment companies; and
    - (ii) Other assets if such interest is in the judgment of the commissioner a collectible asset.
  - (E) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; provided that interest due and unpaid for a period in excess of six months shall not be allowed as an asset.
  - (F) Rent due or accrued on real property if such rent is not in arrears for more than three months, unless the rent is secured by property held in the name of the tenant and conveyed to the insurer as collateral.
- (3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;
- (4) The net amount of uncollected and deferred premiums on an effective date item basis and annuity considerations in the case of a life insurer, corresponding to the basis on which reserves are held;

- (5) ~~[Agents]~~ Producer balances or uncollected premiums, other than for life insurance and other receivables, not more than ninety days past due, less commissions payable thereon; provided that the foregoing limitation shall not apply to premiums and other receivables payable directly or indirectly by the United States government or any of its instrumentalities;
- (6) Installment premiums other than life insurance premiums, in accordance with ~~[regulations prescribed]~~ rules adopted by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;
- (7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by ~~[regulation prescribed]~~ rules adopted by the commissioner;
- (8) (A) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer not disqualified to take such reinsurance under this code; or  
(B) So much of reinsurance recoverable from such reinsurer as does not exceed the liabilities carried by the ceding insurer for amounts withheld under a reinsurance treaty with such reinsurer as security for the payment of obligations thereunder if such funds are held subject to withdrawal by, and under the control of, the ceding insurer in the case of a reinsurer disqualified under this code;
- (9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;
- (10) Deposits or equities recoverable from underwriting associations and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by the commissioner;
- (11) Electronic data hardware;
- (12) Other assets not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims; and
- (13) All assets, whether or not consistent with the provisions of this code, as may be allowed pursuant to the annual statement form provided for in section 431:3-301.”

SECTION 12. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

- “(a) The commissioner shall collect in advance the following fees:
- (1) Certificate of authority: Issuance ..... \$900
  - (2) Organization of domestic insurers and affiliated corporations:
    - (A) Application and all other papers required for issuance of solicitation permit, filing ..... \$1,500
    - (B) Issuance of solicitation permit ..... \$150
  - (3) ~~[General agent's]~~ Producer's license:
    - (A) Issuance, regular license ..... \$75
    - (B) Issuance, temporary license ..... \$75
  - ~~[(4) Subagent's license:~~
    - ~~(A) Issuance, regular license ..... \$75~~
    - ~~(B) Issuance, temporary license ..... \$75~~
  - ~~(5)]~~ (4) Nonresident ~~[agent's or broker's]~~ producer's license:
    - Issuance ..... ~~[\$60]~~ \$75

[6)	Solicitor's license: Issuance .....	\$60
{(7)}	(5) Independent adjuster's license: Issuance .....	<del>[\$60]</del> \$75
[(8)]	(6) Public adjuster's license: Issuance .....	<del>[\$60]</del> \$75
[(9)]	(7) Workers' compensation claims adjuster's limited license: Issuance .....	<del>[\$60]</del> \$75
{(10)}	(8) Independent bill reviewer's license: Issuance .....	\$80
[(11)]	(9) Limited producer's license [issued pursuant to section 431:9-214(e)]: Issuance .....	\$60
[(12)]	(10) Managing general agent's license: Issuance .....	\$75
[(13)]	(11) Reinsurance intermediary's license: Issuance .....	\$75
[(14)]	(12) Surplus line broker's license: Issuance .....	\$150
[(15)]	(13) Service contract provider's registration: Issuance .....	\$75
[(16)]	(14) Approved course provider certificate: Issuance .....	\$100
[(17)]	(15) Approved continuing education course certificate: Issuance .....	\$30
[(18)]	(16) Examination for license: For each examination, a fee to be estab- lished by the commissioner.	

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$75 per year for all services (including extension of the license) for a regularly licensed ~~[general agent;]~~ producer;
- [(3)] ~~\$75 per year for all services (including extension of the license) for a regularly licensed subagent;~~
- (4) (3) ~~[\$45]~~ \$75 per year for all services (including extension of the license) for a regularly licensed nonresident ~~[agent or broker;]~~ producer;
- [(5)] ~~\$30 per year for all services (including extension of the license) for a regularly licensed solicitor;]~~
- [(6)] (4) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- [(7)] (5) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- [(8)] (6) \$45 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster;
- [(9)] (7) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- [(10)] (8) \$45 per year for all services (including extension of the license) for a producer's limited license [issued pursuant to section 431:9-214(e)];
- [(11)] (9) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- [(12)] (10) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- [(13)] (11) \$45 per year for all services (including extension of the license) for a licensed surplus line broker;



- [ (14) ] (12) \$75 per year for all services (including renewal of registration) for a service contract provider;
- [ (45) ] (13) \$65 per year for all services (including extension of the certificate) for an approved course provider; and
- [ (16) ] (14) \$20 per year for all services (including extension of the certificate) for an approved continuing education course.

The services referred to in paragraphs (1) to [(46)] (14) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.

(c) The commissioner shall notify the holder of a certificate of authority issued under article 3, or [the] a license or other certificate issued under article 9 or 9A, by written notice at least thirty days prior to the extension date of the certificate of authority, license, or other certificate. If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within the thirty days immediately following the extension date, the commissioner may revoke, suspend, or inactivate the certificate of authority, license, or other certificate, and shall not reissue, remove the suspension of, or reactivate the certificate of authority, license, or other certificate until the fee and penalty have been paid.”

SECTION 13. Section 431:8-102, Hawaii Revised Statutes, is amended by amending the definition of “surplus lines broker” to read as follows:

““Surplus lines broker” means any [~~general agent~~] producer licensed under section 431:8-310 to place insurance on risks resident, located, or to be performed in this State with unauthorized insurers.”

SECTION 14. Section 431:8-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person in this State shall directly or indirectly act as [~~agent~~] producer for, or otherwise represent or aid on behalf of another, any unauthorized insurer in the solicitation, negotiation, procurement, or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such insurer in the transaction of an insurance business.”

SECTION 15. Section 431:8-300, Hawaii Revised Statutes, is amended to read as follows:

“**§431:8-300 Exemptions from surplus lines law.** This part shall not apply to reinsurance or to the following insurance when placed by a licensed [~~general agent~~] producer of this State:

- (1) Ocean marine insurance;
- (2) Insurance on subjects located, resident, or to be performed wholly outside this State, or on vehicles or aircraft owned and principally garaged outside this State; or
- (3) Insurance of aircraft or cargo of such aircraft, or against liability, other than workers’ compensation and employer’s liability, arising out of the ownership, maintenance, or use of such aircraft.”

SECTION 16. Section 431:8-307, Hawaii Revised Statutes, is amended to read as follows:

**“§431:8-307 Broker’s duty to notify insured.** No contract of insurance placed by a surplus lines broker under this part and no premium charged therefor shall be due and payable until the surplus lines broker, when business is originated by a surplus lines broker, or the ~~[general agent,]~~ producer, when business is referred to a surplus lines broker from a licensed ~~[general agent,]~~ producer, shall have notified the insured in writing that:

- (1) The insurer with which the surplus lines broker placed the insurance is not licensed by this State and is not subject to its supervision; and
- (2) In the event of the insolvency of the surplus lines insurer, losses will not be paid by any of the State’s insurance guaranty funds.

A copy of the notice shall be maintained by the broker with the records of the contract and available for possible examination.

Nothing in this section shall nullify any agreement by any insurer to provide insurance.”

SECTION 17. Section 431:8-310, Hawaii Revised Statutes, is amended as follows:

- (1) By amending subsection (b) to read as follows:

“(b) The commissioner shall issue a surplus lines broker license to any ~~[general agent]~~ producer licensed under article [9] 9A when the ~~[agent]~~ producer has:

- (1) Remitted the annual license fee to the commissioner as provided in article 7; and
- (2) Submitted a completed license application on a form furnished by the commissioner~~;~~ and
- (3) ~~Filed with the commissioner, and maintains during the term of the license, in force and unimpaired, a bond in favor of this State in the sum of \$100,000 with corporate sureties approved by the commissioner. The bond shall be conditioned that the broker will comply with this part and will promptly remit the taxes provided by section 431:8-315. No bond shall be terminated unless not less than sixty days prior written notice is given to the broker and the commissioner].”~~

- (2) By amending subsection (d) to read as follows:

“(d) Licensing procedure, duration, and related matters are governed by article [9.] 9A.”

SECTION 18. Section 431:8-311, Hawaii Revised Statutes, is amended to read as follows:

**“§431:8-311 Compensation.** A licensed surplus lines broker may accept and place surplus lines business from any ~~[general agent]~~ producer licensed in this State for the class of insurance involved, and may compensate the ~~[agent]~~ producer therefor.”

SECTION 19. Section 431:8-312, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For each contract of insurance placed by a surplus lines broker, the broker shall maintain a written statement as to the diligent efforts by the surplus lines broker or the ~~[general agent]~~ producer to place the insurance with authorized insurers.”

SECTION 20. Section 431:8-317, Hawaii Revised Statutes, is amended to read as follows:

**“§431:8-317 Suspension or revocation of license.** (a) The commissioner may suspend ~~[or]~~, revoke, or refuse to extend any surplus lines broker’s license~~[:]~~ any cause specified in any other provision of this chapter, or for any of the following causes:

- (1) ~~[For failure]~~ Failure to file the annual statement required by section 431:8-313 or to pay the tax required by section 431:8-315;
- (2) ~~[For failure]~~ Failure to maintain an office in this State, or to keep records, or to allow the commissioner to examine such surplus lines broker’s records as provided in this article;
- (3) ~~[For removal]~~ Removal of office accounts and records from this State during the period in which such accounts are required to be maintained under this article;
- (4) ~~[For failure]~~ Failure to maintain the bond required by section 431:8-310; ~~[or]~~
- (5) ~~[For any]~~ Any of the causes for which a ~~[general agent’s]~~ producer’s license may be suspended or revoked under article ~~[9.]~~ 9A;
- (6) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (7) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (8) If the licensee has obtained or attempted to obtain the license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9A-105;
- (9) If the licensee has misappropriated, converted to the licensee’s own use, or illegally withheld moneys required to be held in a fiduciary capacity;
- (10) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (11) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (12) If in the conduct of the licensee’s affairs under the license, the licensee has been a source of injury and loss to the public;
- (13) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind;  
or
- (14) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee’s licenses.

(b) The license of any partnership or corporation may be suspended, revoked, or refused for any of the causes applicable to any individual designated in the license to exercise the partnership’s or corporation’s powers.

(c) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner’s request.

~~[(b)]~~ (d) The procedures provided in article ~~[9 ]~~ 9A for the suspension or revocation of ~~[general agents’]~~ producer licenses shall apply to suspension or revocation of a surplus lines broker’s license.

~~[(e)]~~ (e) No broker whose license has been ~~[so]~~ revoked shall again be ~~[so]~~ licensed as a broker within one year thereafter, nor until any fines or delinquent taxes owing by ~~[such]~~ the broker have been paid.”

SECTION 21. Section 431:9-105, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) For the purposes of this article, the following individuals are not deemed to be an adjuster:

- (1) An attorney at law who adjusts insurance losses from time to time incidental to the practice of the attorney’s profession;
- (2) An adjuster of marine losses;
- (3) A salaried employee of a ~~[general agent, a subagent,]~~ producer, an insurer, or of an adjusting corporation or association owned and controlled by insurers; and
- (4) An individual who acts for a self-insurer or for an insured which administers its own group insurance contract.

(e) Following a catastrophe in this State, a Hawaii license shall not be required of a nonresident independent adjuster for the adjustment of losses; provided[:] that:

- (1) The common losses suffered that are to be adjusted are a direct result of that catastrophe;
- (2) The adjuster provides to the licensing branch of the insurance division a certified copy of the adjuster’s current license in another state. That other state shall have similar licensing requirements to section 431:9-222; and
- (3) ~~[That within]~~ Within three working days of when the nonresident independent adjuster begins work, the insurance company, independent adjusting company, ~~[general agent, or subagent]~~ or producer that is utilizing the adjuster shall provide on its letterhead to the licensing branch of the insurance division:
  - (A) The name of the adjuster;
  - (B) The adjuster’s Hawaii mailing and business addresses and phone numbers; and
  - (C) The adjuster’s permanent home and business addresses and phone numbers.

For the purpose of this subsection, a catastrophe exists when due to a sudden, specific, and natural or manmade disaster or phenomenon, there arises property losses in Hawaii that are covered by insurance. These losses must be so severe that resident licensed and independent adjusters will be unable to adjust the losses within a reasonable time as determined by the insurance division.”

SECTION 22. Section 431:9-227, Hawaii Revised Statutes, is amended to read as follows:

**“§431:9-227 [Producer may adjust without a license.** (a) A producer may from time to time, and whether or not on behalf of and as authorized by an insurer, act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(b) **Adjuster; restrictions.** An adjuster who is a producer is not permitted to adjust or cause the adjustment of any loss where the adjuster’s remuneration for the sale of insurance is primarily dependent upon the adjustment of the loss. This ~~[subsection]~~ section shall not be applicable to any producer whose remuneration for the sale of insurance, on December 31, 1955, was primarily dependent upon the adjustment of losses, or to any producer or an insurer who, on December 31, 1955, was transacting insurance business where the producer’s remuneration for the sale of such insurance was primarily dependent upon the adjustment of losses.”

SECTION 23. Section 431:9-232, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Prior to the extension of a license, each licensee shall annually pay the fee required in section 431:7-101 [~~and shall meet the requirements of section 431:9-302~~].

(b) A license shall be inactivated if a licensee fails to[:

- (1) ~~Meet the requirements of section 431:9-302; or~~
- (2) Pay] pay any required fees or penalties.”

SECTION 24. Section 431:9-235, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may suspend, revoke, or refuse to extend any license issued under this article [~~or any surplus lines broker’s license~~] for any cause specified in any other provision of this article, or for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (2) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (3) If the licensee has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, or converted to the licensee’s own use, or has illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (6) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (7) If in the conduct of the licensee’s affairs under the license, the licensee has shown oneself to be a source of injury and loss to the public;
- (8) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind; or
- (9) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee’s licenses.”

SECTION 25. Section 431:9A-102, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

““Class” means the general categories of insurance, as set forth in sections 431:1-204 to 431:1-210, in which insurers may be authorized to transact the business of insurance.

“Line of authority” means a category of insurance products, as set forth in section 431:9A-107(a), which an insurance producer may be licensed to sell pursuant to this article.

“Line of insurance” means an insurance product, contract, or policy designed to cover specified risks that fall within one or more of the classes or types of insurance as defined in sections 431:1-204 to 431:1-211, the lines of authority defined in section 431:9A-107(a), or any other section of this code.”

SECTION 26. Section 431:9A-102, Hawaii Revised Statutes, is amended by amending the definitions of “limited lines insurance”, “person”, and “terminate” to read as follows:

““Limited lines insurance” means those lines of insurance [~~defined in section 431:9A-108(e) or any other line of insurance coverage to individuals through~~

~~a master, corporate, group, or individual policy.] a producer may be licensed to sell pursuant to section 431:9A-A or any other line of insurance sold to individuals under state law or rule for which an insurance producer license in one or more of the lines of authority set forth in section 431:9A-107(a)(1) to (5) is not required.~~

~~“Person” [means a natural person or business entity.] is defined in section 431:1-212.~~

~~“Terminate” means [the cancellation of]:~~

- ~~(1) To cancel the relationship between [the] an insurance producer and [the] an insurer [or the termination of];~~
- ~~(2) To cancel the relationship between an appointing producer and another producer; or~~
- ~~(3) To terminate a producer’s authority to transact insurance.”~~

SECTION 27. Section 431:9A-103, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§431:9A-103]~~ License required.** (a) A person shall not sell, solicit, or negotiate insurance in this State for any line, class, or classes of insurance unless the person is licensed for ~~[that] the proper line or class of authority in accordance with this article.~~

(b) ~~The proper line of authority for which a producer is required to be licensed relative to sale, solicitation, or negotiation of any class or type of insurance set forth in sections 431:1-204 to 431:1-211 is set forth in the following table:~~

<u>Class</u>	<u>Required Line of Authority</u>
<u>Life</u>	<u>Life</u>
<u>Accident and Health or Sickness</u>	<u>Accident and Health or Sickness</u>
<u>Property</u>	<u>Property</u>
<u>Marine and Transportation</u>	<u>Casualty and Property</u>
<u>Vehicle</u>	<u>Casualty and Property</u>
<u>General Casualty</u>	<u>Casualty</u>
<u>Surety</u>	<u>Surety</u>
<u>Title</u>	<u>Title</u>

~~(c) Sale, solicitation, or negotiation of variable life and variable annuity products requires licensing in the variable life and variable annuity products line of authority.~~

~~(d) Sale, solicitation, or negotiation of personal lines insurance requires licensing in the personal lines line of authority or the property and casualty lines of authority.~~

~~(e) Sale, solicitation, or negotiation of limited lines insurance, including limited line credit and limited line travel insurance, is permitted pursuant to section 431:9A-A.”~~

SECTION 28. Section 431:9A-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) A license as an insurance producer shall not be required of the following:~~

- ~~(1) [A] An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission or remuneration on policies written or sold to insure risks residing, located, or to be performed in this State and:~~

- (A) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these and are only indirectly related to the sale, solicitation, or negotiation of insurance;
  - (B) The officer, director, or employee's functions relate to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
  - (C) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor, assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;
- (2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, for the purpose of enrolling individuals under such plans, issuing certificates under plans, or otherwise assists in administering the plans, performs administrative services related to mass marketed property and casualty insurance, or where no commission is paid to the person for the service;
  - (3) An employer or association or its officers, directors, employees, or the trustee of any employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, so long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;
  - (4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision or the training of insurance producers, and who are not individually engaged in the sale, solicitation, or negotiation of insurance;
  - (5) A person whose activities in this State are limited to advertising without the intent to solicit insurance in this State through communications in printed publications or other forms of electronic mass media, whose distribution is not limited to residents of this State, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this State;
  - (6) A person who is not a resident of this State who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or
  - (7) A salaried, full-time employee who counsels or advises the person's employer relative to the insurance interests of the employer or of the subsidiaries or

business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive commissions.”

SECTION 29. Section 431:9A-105, Hawaii Revised Statutes, is amended to read as follows:

**“[§431:9A-105] Insurance producer license examination.** (a) A resident applicant applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 431:9A-109. The examination shall test the knowledge of the applicant concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this State. ~~[Examinations required by this section shall be developed and conducted under rules adopted by the commissioner.]~~

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting fees pursuant to section ~~[431:7-701.]~~ 431:7-101. The fees collected shall be nonrefundable.

(c) Each person applying for an examination shall remit a fee as set forth in section 431:7-101. The fee shall be nonrefundable.

(d) An applicant, who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(e) An applicant's examination scores shall be valid for two years from the date of the examination or last renewal, whichever is later.”

SECTION 30. Section 431:9A-106, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, accurate, and complete to the best of the applicant's knowledge and belief. Before approving the application, the commissioner shall find that the applicant:

- (1) Is at least eighteen years of age;
- (2) Has not committed any act that is a ground for a licensure sanction set forth in section 431:9A-112;
- (3) Has paid the applicable fee set forth in section 431:7-101; and
- (4) Has [successfully] passed, within the two years immediately preceding the date of the examination or issuance of the license, whichever is later, the applicable examination for each line of authority for which the applicant has applied.

(b) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid the applicable fee set forth in chapter 431 or 432; ~~[and]~~
- (2) The business entity has designated a licensed producer who is a natural person responsible for the business entity's compliance with the insurance laws and rules of this State~~[-]; and~~
- (3) Any licensed producer so designated or empowered by a corporation or partnership may not be so designated or empowered by more than one corporation or partnership, except when the corporations or partnerships are affiliates of each other. As used herein, a corporation or partnership is an affiliate of another corporation or partnership if the same person, directly or indirectly through one or more intermediaries, controls both corporations or partnerships. As used herein, “control” has the same meaning as in section 431:11-102.”

SECTION 31. Section 431:9A-107, Hawaii Revised Statutes, is amended as follows:



1. By amending subsection (a) to read as follows:

“(a) Except as provided in section 431:9A-112, a person who has met the requirements of sections 431:9A-105 and 431:9A-106 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

- (1) Life; insurance coverage on human lives, including benefits of endowment and annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income[-];
- (2) Accident and health or sickness; insurance coverage for sickness, bodily injury, or accidental death and benefits for disability income[-];
- (3) Property; insurance coverage for the direct or consequential loss or damage to property of every kind[-];
- (4) Casualty; insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property[-];
- (5) Variable life and variable annuity products; insurance coverage provided under variable life insurance contracts and variable annuities[-];
- (6) Personal; property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
- ~~[(6)]~~ (7) Credit; limited line credit insurance[-]; or
- ~~[(7)]~~ (8) Any other line of insurance permitted under state law or rule.”

2. By amending subsection (c) to read as follows:

“(c) An insurance producer who allows the producer’s license to lapse ~~[may], within [twelve] twenty-four~~ months from the due date of the renewal fee, may reinstate that license without the necessity of passing a written examination. ~~[However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.] If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee.”~~

SECTION 32. Section 431:9A-114, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:9A-114]]~~ **Appointments.** (a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer or is contracted with and appointed by an insurance producer so appointed.

(b) To appoint a producer as its agent, the appointing insurer or producer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency or business entity contract is executed or the first insurance application is submitted to the insurer[-] or producer. If the appointment form is not received by the commissioner within the fifteen-day period, the appointment shall become effective on the date on which the commissioner receives the appointment form. A producer shall disclose to a client if the conditions of subsection (a) have not been met. An insurer or producer may also elect to appoint a producer to all or some insurers within the insurer’s or producer’s holding company system or group by ~~[the]~~ filing with the commissioner ~~[of]~~ a single appointment notice.

(c) Upon receipt of the notice of appointment and within a reasonable time not to exceed thirty days, the commissioner shall verify that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the commissioner shall notify the appointing insurer or producer within five days of its determination.

(d) An appointing insurer or producer shall pay an appointment fee, in the amount and method of payment set forth in article 7, for each insurance producer appointed by the appointing insurer[-] or producer.

(e) An appointing insurer or producer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in article 7.”

SECTION 33. Section 431:9A-115, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) An insurer [~~or~~], authorized representative of the insurer, or a producer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the commissioner within thirty days following the effective date of the termination, using the applicable format prescribed by the commissioner. An insurer [~~or insurer~~], an authorized representative of the insurer, or a producer who terminates a producer for one of the reasons set forth in section 431:9A-112 or who has knowledge the producer was found by a court, governmental body, or self-regulatory organization to have engaged in any of the activities in section 431:9A-112, shall use the particular format for that situation as prescribed by the commissioner. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(b) The insurer [~~or the~~], an authorized representative of the insurer, or a producer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer [~~or~~], an authorized representative of the insurer, or a producer discovers additional information that would have been reportable to the commissioner in accordance with subsection (a) had the insurer, authorized representative of the insurer, or producer then known of its existence.

(c) The insurer [~~and~~], authorized representative of the insurer, and the producer are subject to the following:

- (1) Within fifteen days after making the notification required by subsections (a) and (b), the insurer, authorized representative of the insurer, or the producer shall mail a copy of the notification to the producer at the producer’s last known address. If the producer is terminated for any of the causes listed in section 431:9A-112, the insurer, authorized representative of the insurer, or the producer shall provide a copy of the notification to the producer at the producer’s last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.
- (2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer [~~shall~~], by the same means, shall simultaneously send a copy of the comments to the reporting insurer, authorized representative of the insurer, or the producer, and the comments shall become a part of the commissioner’s file and shall accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (e).”

SECTION 34. Section 431:9A-123, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not apply to life or [~~disability~~] accident and health or sickness insurance if the records required of such insurance are customarily maintained in the offices of the insurer.”

SECTION 35. Section 431:9A-124, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:9A-124]]~~ **Prerequisites for license renewal.** (a) In addition to payment of fees required in section 431:7-101, to qualify for a license renewal a licensee shall:

- (1) During the twenty-three months preceding a license renewal, complete the required number of credit hours as set forth in subsection (b) in approved continuing education courses; and
- (2) Pay the fees as required under section 431:7-101.

(b) The required number of credit hours shall be as follows:

- (1) For a licensee authorized to sell ~~[classes]~~ lines of insurance in only one of the following groups:
  - (A) Life or ~~[disability;]~~ accident and health or sickness; or
  - (B) Property, marine and transportation, vehicle, general casualty, or surety;

the requisite number of credit hours shall be twenty hours relating to the ~~[class of insurance]~~ line of authority for which the license is held, including three credit hours relating to the insurance laws and the insurance rules;

- (2) For a licensee with a license to sell ~~[classes]~~ lines of insurance in both groups in paragraph (1), the total requisite number of credit hours shall be thirty hours, of which:
  - (A) Twelve hours shall relate to paragraph (1)(A) of which three hours shall relate to the insurance laws and the rules relating to the ~~[class of insurance]~~ line of authority for which the license is held; and
  - (B) Eighteen hours shall relate to paragraph (1)(B) of which three hours shall relate to the insurance laws and the rules relating to the ~~[class of insurance]~~ line of authority for which the license is held.

(c) Continuing education equivalents, as determined and approved by the commissioner, may include the teaching of continuing education courses and holding certain professional designations, but shall not include the use of carryover credit hours earned in excess of the required hours in any two-year renewal cycle.

(d) Unless an extension of time has been granted in advance by the commissioner, a licensee's failure to satisfy all of the continuing education requirements one month prior to the renewal date shall result in that licensee's license being automatically placed on an inactive status. To reactivate a license, the licensee shall submit proof to the insurance division that the requisite number of credit hours have been completed and the licensee shall pay any required fees and penalties.

(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of completion. The licensee shall submit the certificate of completion to the insurance division not later than one month prior to the renewal date for the license.

(f) This section shall not apply to a licensee granted an exemption by the commissioner from this section pursuant to section 431:9A-116.

(g) The commissioner may grant an extension of time to meet the requirements of this section to a licensee on extended active military duty for a period of time equal to the number of days the licensee was on active military duty.”

SECTION 36. Section 431:9A-129, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§431:9A-129]~~ Penalty.** (a) The commissioner may revoke or suspend the certificate of an approved course provider for any violation of the insurance code, subject to the right of the provider to a hearing as provided in chapter 91.

(b) The commissioner shall sanction the license of any licensee who has submitted an invalid, false, or fraudulent certificate of completion, subject to the right of a licensee to have a hearing as provided in chapter 91.

~~[(b)]~~ (c) The commissioner shall revoke the approval of an approved course provider who has issued a certificate of completion to a licensee who has not attended the continuing education course ~~[or]~~ to a licensee who has not met the course requirements, subject to the right of an approved course provider to have a hearing as provided in section 431:2-308.”

SECTION 37. Section 431:9B-101, Hawaii Revised Statutes, is amended to amend the definition of “licensed producer” or “producer” to read as follows:

““Licensed producer” or “producer” means ~~[an agent, solicitor, broker,]~~ a producer or reinsurance intermediary licensed pursuant to this chapter.”

SECTION 38. Section 431:10-201, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10-201 Scope.** The provisions of this part shall apply to all classes or lines of insurance except:

- (1) Ocean marine insurance~~[- and]~~ as defined in section 431:1-211,
- (2) Surplus line insurance, as defined in section 431:8-02,<sup>1</sup> and
- (3) Life ~~[or disability insurance;]~~ insurance, or accident and health or sickness insurance; provided the contracts are neither issued for delivery in this State nor delivered in this State.”

SECTION 39. Section 431:10-203, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A minor of the age of fifteen years or more, as determined by the nearest birthday, shall be deemed to be competent to:

- (1) Contract for any form of life~~[- or disability]~~ insurance or accident and health or sickness insurance on the minor’s own life or body, for the minor’s own benefit or for the benefit of the minor’s father, mother, spouse, child, brother, sister, or grandparent;
- (2) Surrender, make loans upon, or assign any insurance issued at any time upon the minor’s life or body, subject to the provisions of the policy;
- (3) Give a valid discharge for any benefit accruing or for any money payable under the contract; and
- (4) Exercise any of the rights or privileges reserved to the insured in and by any such policy of insurance;

except that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by a promissory note or otherwise, any premium on any such insurance contract.

(c) Where any form of life ~~[or disability]~~ insurance or accident and health or sickness insurance is issued at any time upon the life or body of a minor, unless the policy shall otherwise provide, or unless all of the premiums on the policy are paid by the minor, then until the minor has reached the age of eighteen years, either or both parents of the minor, or in the event of the death of one parent or the divorce of

the parents and the custody of the minor being awarded to one parent, then the surviving parent or the custodial parent of the minor shall be authorized to:

- (1) Surrender, make loans upon, or assign such insurance[;];
- (2) Give a valid discharge for any benefit accruing or for money payable under the contract[;]; and
- (3) Exercise any of the rights or privileges reserved to the insured in and by any such policy of insurance without the order or intervention of any court, or the appointment of a legal guardian.

No insurer shall have any responsibility for or be required to see to the application of the proceeds paid in accordance with this section.”

SECTION 40. Section 431:10-205, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10-205 Interest of the insured.** When the name of a person intended to be insured is specified in the policy, the insurance can be applied only to the person’s own proper interest. This section shall not apply to life ~~or disability~~ insurees.] insurance or accident and health or sickness insurance.”

SECTION 41. Section 431:10-206, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10-206 Application for insurance: consent of insured required.** No life ~~or disability~~ insurance or accident and health or sickness insurance contract upon an individual shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies for or consents to the insurance in writing, except in the following cases:

- (1) A spouse may effectuate such insurance upon the other spouse.
- (2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may effectuate insurance upon the life of or pertaining to the minor.

This section shall not apply to contracts of group life insurance or of group or blanket disability insurance as defined in this code.”

SECTION 42. Section 431:10-207, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any insurer issuing an insurance contract upon an application which has been unlawfully altered by its officer, employee, producer, or agent shall not have available, in any action arising out of the contract, any defense which is based upon the fact of such alteration, or as to any item in the application which was so altered.”

SECTION 43. Section 431:10-208, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) No application for the issuance of any life insurance contract shall be admissible in evidence in any action relative to such contract, unless a true copy of the application was attached to or made a part of the policy when issued and delivered. A ~~[photostatic or other process]~~ copy or ~~[reduction]~~ reproduction of the application or medical examination, if any, may be used if clearly legible. This subsection shall not apply to contracts of industrial life insurance.

(b) If any policy of life ~~or disability~~ insurance or accident and health or sickness insurance delivered in this State is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application for reinstatement or renewal, within thirty days of receipt of such request at any of its offices, the insurer shall deliver or mail a copy of the

application to the person making the request. If the copy is not so delivered or mailed, the insurer shall be precluded from introducing the application as evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal.”

SECTION 44. Section 431:10-214, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be printed on or attached to every individual life insurance policy and every individual ~~[disability]~~ accident and health or sickness insurance policy issued for delivery in this State a notice in ten-point bold type stating in substance that the person to whom the policy is issued is entitled to return the policy or contract within ten days of its receipt by ~~[said]~~ the purchaser and to have the premium paid refunded if the purchaser is not satisfied with it for any reason. If, pursuant to such notice, a purchaser mails or delivers the policy to the company or association at its home or branch office or to the ~~[agent]~~ producer through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. When an individual life insurance policy is mailed or delivered by the purchaser within the ten-day period, the insurer may be reimbursed for the actual medical examination expenses incurred in processing the policy or contract, provided the foregoing notice includes a statement to this effect.”

SECTION 45. Section 431:10-218, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No insurer or its officer, employee, ~~[agent, solicitor,]~~ producer, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy.”

SECTION 46. Section 431:10-230, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10-230 Payment discharges insurer.** Whenever the proceeds of, or payments under, a policy or contract ~~[issued by a life or disability insurer]~~ for life insurance, or accident and health or sickness insurance become payable in accordance with the terms of the policy or the exercise of any right or privilege under the policy, and the insurer makes payments in accordance with the terms of the policy or with a written assignment pursuant to section 431:10-229, the person designated in the policy or by the assignment as being entitled to the proceeds or payments, shall be entitled to receive them and to give full acquittance for such payment. Such payment by the insurer shall fully discharge the insurer from all claims under the policy unless before the payment is made, the insurer has received at its home office written notice, by or on behalf of some other person, that such other person claims to be entitled to such payment or some interest in the policy.”

SECTION 47. Section 431:10-231, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10-231 Exemption of proceeds; ~~[disability.]~~ accident and health or sickness.** The proceeds of all contracts of ~~[disability]~~ accident and health or sickness insurance and of provisions providing benefits on account of the insured’s disability which are supplemental to life insurance or annuity contracts shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for the beneficiary’s use.”

SECTION 48. Chapter 431, Hawaii Revised Statutes, is amended by amending the title of article 10A and the title of part I to read as follows:

**“ARTICLE 10A  
ACCIDENT AND HEALTH OR SICKNESS INSURANCE CONTRACTS**

**PART I. INDIVIDUAL ACCIDENT AND HEALTH OR SICKNESS  
POLICIES”**

SECTION 49. Section 431:10A-101, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-101 Applications and exceptions.** This part shall apply to all policies of accident and health or sickness insurance delivered or issued for delivery in this State, except that nothing in this part shall apply to or affect:

- (1) Any policy of workers' compensation insurance or any policy of vehicle or liability insurance with or without supplementary coverage therein;
- (2) Any policy or contract of reinsurance;
- (3) Any blanket or group policy of insurance; or
- (4) Life insurance, endowment, or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and health or sickness insurance as:
  - (A) Provide additional benefits in case of death, dismemberment, or loss of sight by accident<sup>1</sup>; or
  - (B) Operate to safeguard such contracts against lapse, or to give a special surrender value, special benefit, or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.”

SECTION 50. Section 431:10A-102, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-102 Accident and health or sickness insurance policy defined.** The term, policy of accident and health or sickness insurance, includes any policy or contract covering the class of insurance described in section 431:1-205.”

SECTION 51. Section 431:10A-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A policy of accident and health or sickness insurance shall neither be delivered nor issued for delivery to any person in this State unless:

- (1) The entire monetary and other considerations are expressed in the policy;
- (2) The time at which the insurance takes effect and terminates is expressed in or determinable from the policy;
- (3) It purports to insure only one person, except that a policy may provide family coverage as defined in section 431:10A-103 or reciprocal beneficiary family coverage as defined in section 431:10A-601;
- (4) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten point with a lower

case unspaced alphabet length not less than one hundred [and] twenty point. The text shall include all printed matter except the name and address of the insurer, name or title of the policy, [the] a brief description, if any, and captions and subcaptions;

- (5) The exceptions and reductions of indemnity are set forth in the policy and, except the required and optional provisions set forth in section 431:10A-105 and section 431:10A-106, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as exceptions, or exceptions and reductions; provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction shall be included with the benefit provision to which it applies;
- (6) Each policy form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page; and
- (7) It does not contain any provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner."

SECTION 52. Section 431:10A-105, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-105 Required provisions.** Except as provided in section 431:10A-107, each policy of accident and health or sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below. These provisions shall be in the words in which they appear below, provided that the insurer may substitute corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. The provisions shall be preceded individually by the specified caption, or by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

- (1) "Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions."
- (2) (A) "Time Limit on Certain Defenses:
  - (i) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for this policy shall be used to void this policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of the three-year period.
  - (ii) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."



- (B) The policy provision set forth in subparagraph (A)(i) shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of section 431:10A-106(1) through (4) in the event of misstatement with respect to age or occupation or other insurance.
- (C) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of subparagraph (A)(i) the following provision (from which the clause in parentheses may be omitted at the insurer's option): "Incontestable: After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."
- (3) (A) "Grace period: A grace period of days (insert a number not less than seven for weekly premium policies, ten for monthly premium policies, and thirty-one for all other policies) will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."
- (B) A policy which contains a cancellation provision may add at the end of the above provision: "subject to the right of the insurer to cancel in accordance with the cancellation provision."
- (C) A policy in which the insurer reserves the right to refuse any renewal shall have at the beginning of the above provision: "Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."
- (4) (A) "Reinstatement: If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided [~~however,~~] that if the insurer or agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of the application by the insurer or, lacking approval, upon the forty-fifth day following the date of conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from accidental injury as may be sustained after the date of reinstatement and loss due to sickness as may begin more than ten days after that date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with the reinstatement shall be applied to a period for which premium has not been previously paid, but not

- to any period more than sixty days prior to the date of reinstatement.”
- (B) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.
- (5) (A) “Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of the office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.”
- (B) In a policy providing a loss of time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: “Subject to the qualification set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of the claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in giving notice shall not impair the insured’s right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which notice is actually given.”
- (6) “Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant the forms, that are usually furnished by it for filing proofs of loss. If the forms are not furnished within fifteen days after the giving of notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made.”
- (7) “Proofs of Loss: In case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, written proof of loss must be furnished to the insurer at its office within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of loss. Failure to furnish proof of loss within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within the time required, provided proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than fifteen months from the time proof is otherwise required.”
- (8) “Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of loss. Subject to due written proof of loss, all accrued indemnities for

loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

- (9) (A) "Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting payment which may be prescribed herein and effective at the time of payment. If no designation or provision is then effective, the indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to the designated beneficiary or to the estate of the insured. All other indemnities will be payable to the insured."
- (B) The following provisions, or either of them, may be included with the above provision at the option of the insurer:
  - (i) "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay the indemnity, up to an amount not exceeding \$2,000 to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of the payment."
  - (ii) "Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of loss, be paid directly to the hospital or person rendering the services; but it is not required that the service be rendered by a particular hospital or person."
- (10) "Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."
- (11) "Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No action at law or in equity shall be brought after the expiration of three years after the time written proof of loss is required to be furnished."
- (12) (A) "Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."
- (B) The first clause of the above provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option."

SECTION 53. Section 431:10A-106, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-106 Optional provisions.** Except as provided in section 431:10A-107, no policy of accident and health or sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below unless the provisions are in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions are optional provisions. Any such provision contained in the policy shall be preceded individually by the specified caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

- (1) “Change of Occupation: If the insured is injured or contracts sickness after having changed occupations to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured’s occupation changes to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.”
- (2) “Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.”
- (3) Other insurance in this insurer shall be in one of the following forms:
  - (A) “Other Insurance in This Insurer: If an accident and health or sickness [~~or accident and sickness~~] policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to the insured’s estate.”; or
  - (B) “Other Insurance in This Insurer: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, the insured’s beneficiary, or the insured’s estate, as the case may be,

and the insurer will return all premiums paid for all other such policies.”

- (4) Insurance with other insurers. Either or both of the following forms shall be used:

(A) (i) “Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.”

(ii) “Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all the indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.”

(B) If the provision set forth in ~~[item (4)]~~ subparagraph (A)(i) is included in a policy which also contains the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii), there shall be added to the caption of the ~~[item (4)]~~ subparagraph (A)(i) provision the phrase, “expense incurred benefits”.

(C) The insurer may, at its option, include in the provision set forth in ~~[item (4)]~~ subparagraph (A)(i) a definition of other valid coverage, approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this State or any other state or territory of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition the term shall not include group insurance, automobile medical payment insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the provision set forth in ~~[item (4)]~~

- subparagraph (A)(i) with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in ~~[item (4)]~~ subparagraph (A)(i), no third party liability coverage shall be included as other valid coverage.
- (D) If the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii) is included in a policy which also contains the provision set forth in ~~[item (4)]~~ subparagraph (A)(i), there shall be added to the caption of the ~~[item (4)]~~ subparagraph (A)(ii) provision the phrase, "other benefits".
- (E) The insurer may, at its option, include in the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii) a definition of other valid coverage, approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this State or any other state or territory of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition the term shall not include group insurance, or benefits provided by union welfare plans or employer or employee benefit organizations. For the purpose of applying the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii) with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in ~~[item (4)]~~ subparagraph (A)(ii), no third party liability coverage shall be included as other valid coverage.
- (5) (A) "Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

- (B) The above policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.
- (C) The insurer may, at its option, include in [{}subparagraph[{}]] (B) a definition of valid loss of time coverage approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this State or any state, district, or territory of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such terms shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.
- (6) "Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."
- (7) "Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."
- (8) "Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."
- (9) "Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."
- (10) "Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.'''"

SECTION 54. Section 431:10A-114, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-114 Age limit.** If any policy of accident and health or sickness insurance contains a provision establishing as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.”

SECTION 55. Section 431:10A-116, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-116 Coverage for specific services.** Every person insured under a policy of accident and health or sickness insurance delivered or issued for delivery in this State shall be entitled to the reimbursements and coverages specified below:

- (1) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides for reimbursement for any visual or optometric service, which is within the lawful scope of practice of a duly licensed optometrist, the person entitled to benefits or the person performing the services shall be entitled to reimbursement whether the service is performed by a licensed physician or by a licensed optometrist. Visual or optometric services shall include eye or visual examination, or both, or a correction of any visual or muscular anomaly, and the supplying of ophthalmic materials, lenses, contact lenses, spectacles, eyeglasses, and appurtenances thereto;
- (2) Notwithstanding any provision to the contrary, for all policies, contracts, plans, or agreements issued on or after May 30, 1974, whenever provision is made for reimbursement or indemnity for any service related to surgical or emergency procedures, which is within the lawful scope of practice of any practitioner licensed to practice medicine in this State, reimbursement or indemnification under such policy, contract, plan, or agreement shall not be denied when such services are performed by a dentist acting within the lawful scope of the dentist's license;
- (3) Notwithstanding any provision to the contrary, whenever the policy provides reimbursement or payment for any service, which is within the lawful scope of practice of a psychologist licensed in this State, the person entitled to benefits or performing the service shall be entitled to reimbursement or payment, whether the service is performed by a licensed physician or licensed psychologist;
- (4) Notwithstanding any provision to the contrary, each policy, contract, plan, or agreement issued on or after February 1, 1991, except for policies that only provide coverage for specified diseases or other limited benefit coverage, but including policies issued by companies subject to chapter 431, article 10A, part II and chapter 432, article 1 shall provide coverage for screening by low-dose mammography for occult breast cancer as follows:
  - (A) For women forty years of age and older, an annual mammogram; and



- (B) For a woman of any age with a history of breast cancer or whose mother or sister has had a history of breast cancer, a mammogram upon the recommendation of the woman's physician.

The services provided in this paragraph are subject to any coin-surance provisions that may be in force in these policies, contracts, plans, or agreements.

For the purpose of this paragraph, the term "low-dose mammog-raphy" means the x-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the x-ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad mid-breast, with two views for each breast. An insurer may provide the services required by this paragraph through contracts with providers; provided that the contract is determined to be a cost-effective means of delivering the services without sacrifice of quality and meets the approval of the director of health;

- (5) (A) (i) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides coverage for the children of the insured, that coverage shall also extend to the date of birth of any newborn child to be adopted by the insured; provided that the insured gives written notice to the insurer of the insured's intent to adopt the child prior to the child's date of birth or within thirty days after the child's birth or within the time period required for enrollment of a natural born child under the policy, contract[,[]] plan, or agreement of the insured, whichever period is longer; pro-vided further that if the adoption proceedings are not suc-cessful, the insured shall reimburse the insurer for any ex-penses paid for the child; and
- (ii) Where notification has not been received by the insurer prior to the child's birth or within the specified period following the child's birth, insurance coverage shall be effective from the first day following the insurer's receipt of legal notifica-tion of the insured's ability to consent for treatment of the infant for whom coverage is sought; and
- (B) When the insured is a member of a health maintenance organiza-tion (HMO), coverage of an adopted newborn is effective:
  - (i) From the date of birth of the adopted newborn when the newborn is treated from birth pursuant to a provider contract with the health maintenance organization, and written notice of enrollment in accord with the health maintenance organi-zation's usual enrollment process is provided within thirty days of the date the insured notifies the health maintenance organization of the insured's intent to adopt the infant for whom coverage is sought; or
  - (ii) From the first day following receipt by the health mainte-nance organization of written notice of the insured's ability to consent for treatment of the infant for whom coverage is sought and enrollment of the adopted newborn in accord with the health maintenance organization's usual enrollment process if the newborn has been treated from birth by a provider not contracting or affiliated with the health mainte-nance organization; and

- (6) Notwithstanding any provision to the contrary, any policy, contract, plan, or agreement issued or renewed in this State shall provide reimbursement for services provided by advanced practice registered nurses recognized pursuant to chapter 457. Services rendered by advanced practice registered nurses are subject to the same policy limitations generally applicable to health care providers within the policy, contract, plan, or agreement.”

SECTION 56. Section 431:10A-116.3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) From July 1, 1998, no accident and health or sickness insurance plan that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services were provided. The coverage required in this section may be subject to all terms and conditions of the plan agreed upon among the enrollee or subscriber, the insurer, and the provider.”

SECTION 57. Section 431:10A-117, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-117 Franchise plan.** The term employees as used in this section shall include the officers, managers, and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership.

Insurance may be issued pursuant to this part on a franchise plan under the terms of which accident and health or sickness insurance is issued to:

- (1) Five or more employees of any corporation, co-partnership, or individual employer, or any governmental corporation, agency, or department thereof; or
- (2) Ten or more members, employees, or employees of members of any trade or professional association, of a labor union, or of any other association having had an active existence for at least two years provided:
  - (A) Such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance;
  - (B) Such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for; and
  - (C) There is under an arrangement whereby the premiums on the policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members, or by some designated person acting on behalf of the employer or association.”

SECTION 58. Section 431:10A-120, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each policy of accident and health or sickness insurance, other than life insurance, disability income insurance, and long-term care insurance, issued or renewed in this State, each employer group health policy, contract, plan, or agreement issued or renewed in this State, all health insurance policies issued or renewed in this State, all policies providing family coverages as defined in section 431:10A-

103, and all policies providing reciprocal beneficiary family coverage as defined in section 431:10A-601, shall contain a provision for coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its policyholders or dependents of the policyholder in this State; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician licensed under chapter 453 or 460.

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.”

SECTION 59. Section 431:10A-121, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§431:10A-121)]~~ **Coverage for diabetes.** Each policy of accident and health or sickness insurance providing coverage for health care, other than an accident-only, specified disease, hospital indemnity, medicare supplement, long-term care, or other limited benefit health insurance policy, that is issued or renewed in this State, shall provide coverage for outpatient diabetes self-management training, education, equipment, and supplies, if:

- (1) The equipment, supplies, training, and education are medically necessary; and
- (2) The equipment, supplies, training, and education are prescribed by a health care professional authorized to prescribe.”

SECTION 60. Section 431:10A-201, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-201 Definitions.** For the purposes of this article:

- (1) (A) Blanket disability insurance policy means any policy or contract of ~~[disability]~~ accident and health or sickness insurance which conforms with the description and complies with one of the following requirements:
  - (i) A policy issued to any common carrier of passengers, which carrier shall be deemed the policyholder, covering a group defined as all persons who may become such passengers, and whereby such passengers shall be insured against loss or damage resulting from death or bodily injury either while, or as a result of, being such passengers.
  - (ii) A policy issued in the name of any volunteer fire department, first aid or ambulance squad, or volunteer police organization, which shall be deemed the policyholder, and covering all the members of any such organization against loss from accidents resulting from hazards incidental to duties in connection with such organizations.
  - (iii) A policy issued in the name of any established organization whether incorporated or not, having community recognition and operated for the welfare of the community and its members and not for profit, which shall be deemed the policyholder, and covering all volunteer workers who serve without pecuniary compensation and the members of the organization, against loss from accidents occurring while

engaged in the actual performance of duties on behalf of such organization or in the activities thereof.

- (iv) A policy issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employees against death or bodily injury resulting while, or from, being exposed to such exceptional hazards.
- (v) A policy covering students or employees issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.
- (vi) A policy issued to a substantially similar group who, in the discretion of the commissioner, may be properly eligible for blanket disability insurance.
- (B) Nothing in this section shall be deemed to affect the liability of policyholders for the death of or injury to, any such member of such group.
- (C) Individual applications shall not be required from individuals covered under a blanket disability insurance contract.
- (2) The term employees shall be deemed to include as employees of a single employer, the compensated officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is under common control through stock ownership, contract, or otherwise. The policy may provide that the term employees shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The term employee may be deemed to include retired employees.
- (3) The term employer shall be deemed to include any municipal corporation or governmental unit, agency, or department thereof as well as private individuals, firms, corporations, and other persons.
- (4) Group disability insurance means that form of [disability] accident and health or sickness insurance covering groups of persons, with or without their dependents and family members, and issued under a master policy to:
  - (A) Such groups as qualify for group life insurance under section 431:10D-201 to ~~[section]~~ 431:10D-211 of this code; or
  - (B) An automobile club formed for purposes other than obtaining group insurance, covering the members of the club."

SECTION 61. Section 431:10A-203, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-203 Standard provisions.** Every policy of group or blanket disability insurance shall contain in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder. No such policy of group or blanket disability insurance shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the individuals insured than would be

permitted by the standard provisions required for individual [disability] accident and health or sickness insurance policies.

- (1) Representations. There shall be a provision that:
  - (A) All statements, made by the policyholder or by the individuals insured, shall be deemed to be representations and not warranties;
  - (B) No statement, made in the application by the policyholder, shall be used in any contest unless a copy of the application, if any, of the policyholder shall be attached to the policy when issued;
  - (C) No statement made by any individual insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to the individual's beneficiary, if any; and
  - (D) A misrepresentation, unless it is made with actual intent to deceive or unless it materially affects either the acceptance of the risk or the hazard assumed by the insurer, shall not prevent a recovery on the policy.
- (2) Certificates. There shall be a provision that the insurer shall issue to the policyholder for delivery to each insured employee or member, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage, and to whom the benefits are payable. If family members are insured, only one certificate need be issued for each family. This ~~[section]~~ paragraph shall not apply to blanket disability insurance policies.
- (3) Additional insureds. There shall be a provision that to the group originally insured may be added, from time to time, eligible new employees, members, or dependents, as the case may be, in accordance with the terms of the policy.
- (4) Age limitations. There shall be a provision specifying:
  - (A) The ages, if any, to which the insurance provided shall be limited;
  - (B) The ages, if any, for which additional restrictions are placed on benefits; and
  - (C) The additional restrictions placed on the benefits at such ages.
- (5) Payment of premiums. There shall be a provision that all premiums due under the policy shall be remitted by the employer or employers of the persons insured, by the policyholder or by some other designated person acting on behalf of the association or group insured, to the insurer on or before the due date thereof within such grace period as may be specified therein."

SECTION 62. Section 431:10A-206, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-206 Coverage of newborn children.** All group or blanket disability policies providing family coverage, as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-601, on an expense incurred basis shall provide coverage for newborn children in compliance with section 431:10A-115."

SECTION 63. Section 431:10A-207, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-207 Coverage for specific services.** Every person insured under a group or blanket disability insurance policy ~~[of disability insurance]~~ shall be entitled to the reimbursements and coverages specified in section 431:10A-116."

SECTION 64. Section 431:10A-307, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and health or sickness insurance policies sold to persons eligible for medicare, other than:

- (1) Medicare supplement policies; or
- (2) Disability income policies.

(e) The commissioner may adopt reasonable rules to govern the full and fair disclosure of information in connection with the replacement of accident and health or sickness insurance policies, subscriber contracts, or certificates by persons eligible for medicare.”

SECTION 65. Section 431:10A-402, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-402 Definitions.** Unless the context otherwise requires, for the purposes of this part:

- (1) Association means a voluntary unincorporated association formed for the purpose of enabling cooperative action to provide [~~disability~~] accident and health or sickness insurance as defined in section 431:1-205, in accordance with this part in this or any other state having legislation enabling the issuance of insurance of the type provided in this part.
- (2) Insurer means any insurance company authorized to transact [~~disability~~] accident and health or sickness insurance in this State.
- (3) Extended health insurance means hospital, surgical, and medical expense insurance provided by a policy issued as provided by this part.”

SECTION 66. Section 431:10A-404, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-404 Persons authorized to transact insurance.** Notwithstanding the provisions of article 9, any person licensed to transact [~~disability~~] accident and health or sickness insurance as a producer may transact extended health insurance and may be paid a commission in accordance with commission schedules filed with the commissioner as required by section 431:10A-406.”

SECTION 67. Section 431:10B-102, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10B-102 Scope.** All life insurance and all [~~disability~~] accident and health or sickness insurance in connection with loans or other credit transactions shall be subject to [~~the provisions of~~] this article, except such insurance in connection with a loan or other credit transaction of more than ten years’ duration; nor shall insurance be subject to [~~the provisions of~~] this article where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor. Nothing in this article shall be construed to relieve any person from compliance with any other applicable law.”

SECTION 68. Section 431:10B-110, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The enrolling of debtors under a group creditor policy and the issuance of certificates of insurance pursuant thereto or the issuing of individual policies by a creditor shall not be considered a sale or solicitation of insurance or the transaction of an insurance business. A limited license issued under section [431:9-214] 431:9A-A shall be required for such acts. A producer’s ~~or broker’s~~ license shall not be required.”

SECTION 69. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any person, in the capacity of a licensed or unlicensed motor vehicle insurer, self-insurer, ~~[general agent, subagent, solicitor,]~~ producer, or other representative, who violates any provision of this article shall be assessed a civil penalty not to exceed \$5,000 for each violation.

(c) Any person, in the capacity of a licensed or unlicensed motor vehicle insurer, self-insurer, ~~[general agent, subagent, solicitor,]~~ producer, or other representative, who knowingly violates any provision of this article shall be assessed a civil penalty of not less than \$3,000 and not to exceed \$10,000 for each violation.”

SECTION 70. Section 431:10D-107, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This section shall not apply to:

- (1) Any reinsurance;
- (2) Group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code;
- (3) Any premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity; or
- (4) Any contract which shall be delivered outside this State through ~~[an agent]~~ a producer or other representative of the insurer issuing the contract.”

SECTION 71. Section 431:10D-115, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-115 Dealing in dividends.** No life insurer nor any of its representatives, ~~[general agents, subagents, solicitors,]~~ producers, or affiliates, shall buy, take by assignment other than in connection with policy loans, or otherwise deal or traffic in any rights to dividends existing under participating life insurance policies issued by the insurer.”

SECTION 72. Section 431:10D-206, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-206 Agent groups.** The lives of a group of individuals may be insured under a policy issued to a principal, or if such principal is a life insurer, by or to such principal covering when issued not less than twenty-five agents of the principal, subject to the following requirements:

- (1) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for the principal for a commission or other fixed or ascertainable compensation.

- (2) The policy must insure either all of the agents or all of any class or classes thereof, except that if a policy is intended to insure several such classes it may be issued to insure any such class of which seventy-five per cent are covered and extended to other classes as seventy-five per cent thereof express the desire to be covered.
- (3) The premium on the policy shall be paid by the principal or by the principal and the agents jointly. When the premium is paid by the principal and agents jointly and the benefits of the policy are offered to all eligible agents, the policy, when issued, must insure not less than seventy-five per cent of the agents.
- (4) The amounts of insurance shall be based upon some plan which will preclude individual selection.
- (5) The insurance shall be for the benefit of persons other than the principal.
- (6) The policy shall terminate if, subsequent to issue the number of agents insured falls below twenty-five lives or seventy-five per cent of the number eligible and the contribution of the agents, if the premiums are on a renewable term insurance basis, exceed \$1 per month per \$1,000 of insurance coverage plus any additional premium per \$1,000 of insurance coverage charged to cover one or more hazardous occupations.
- (7) For the purpose of this section the term agents shall be deemed to include ~~[general agents, subagents, solicitors,]~~ producers and salespersons."

SECTION 73. Section 431:10D-502, Hawaii Revised Statutes, is amended by amending the definition of "producer" to read as follows:

"“Producer” includes ~~[general agent, subagent, agent, solicitor, insurance broker or brokers or any other]~~ any person, firm, association, or corporation licensed pursuant to article [9-] 9A.”

SECTION 74. Section 431:10E-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No person shall knowingly ~~[issue, place, procure, or accept any insurance contract]~~ sell, solicit, negotiate, or make any contract for insurance which would result in over-insurance of the property or interest therein proposed to be insured, except as is provided in section 431:10E-103.”

SECTION 75. Section 431:10H-229, Hawaii Revised Statutes, is amended to read as follows:

**“[§431:10H-229[)] Standards for marketing.** (a) Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this State, directly or through producers, shall:

- (1) Establish marketing procedures to assure that any comparison of policies by its ~~[agents or other]~~ producers will be fair and accurate;
- (2) Establish marketing procedures to assure excessive insurance is not sold or issued;
- (3) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following:  
“Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.”;



- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance currently has long-term care insurance and the types and amounts of any such insurance;
  - (5) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with subsection (a);
  - (6) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer, at solicitation, shall provide written notice to the prospective policyholder or certificate holder of a state senior insurance counseling program including the name, address, and telephone number of the program; and
  - (7) For long-term care health insurance policies and certificates, use the terms “noncancellable” or “level premium” only when the policy or certificate conforms to section 431:10H-202.
- (b) In addition to the acts or practices prohibited in article 13 of this chapter, all of the following acts and practices are prohibited:
- (1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
  - (2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend purchase of insurance.
  - (3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance [agent] producer or insurance company.”

SECTION 76. Section 431:10H-230, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The association shall also:

- (1) At the time of the association’s decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including benefits, features, and rates, and update the examination thereafter in the event of material change;
- (2) Actively monitor the marketing efforts of the insurer and its [agents;] producers; and
- (3) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.”

SECTION 77. Section 431:11-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

- (2) Acting as an insurance [~~broker or as an insurance agent~~] producer for its parent or for any of its parent's insurer subsidiaries;
- (3) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
- (4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
- (5) Acting as a broker/dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
- (6) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups;
- (7) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;
- (8) Ownership and management of assets which the parent corporation could itself own or manage; provided that the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to the investments by the insurer;
- (9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;
- (10) Financing of insurance premiums, agents, and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section."

SECTION 78. Section 431:11A-101, Hawaii Revised Statutes, is amended by amending the definition of "producer" to read as follows:

"“Producer” means [~~general agent, subagent, agent, solicitor, insurance broker or brokers or any other~~] any person, firm, association, or corporation licensed pursuant to article [9:] 9A, when, for any compensation, commission, or other thing of value, the insurance broker or brokers or other person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the insurance broker or brokers, person, firm, association, or corporation.”

SECTION 79. Section 431:12-114, Hawaii Revised Statutes, is amended to read as follows:

“**§431:12-114 Licenses.** No person shall act as an insurance [~~agent, subagent or solicitor,~~] producer in connection with mass merchandising of insurance, unless the person is licensed as such under [~~the provisions of~~] article [9:] 9A.”

SECTION 80. Section 431:12-115, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Establishment and maintenance of an office by any licensed [~~general agent~~] producer of an insurer shall meet the requirements of this section.”

SECTION 81. Section 431:13-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
  - (A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
  - (B) Misrepresents the dividends or share of the surplus to be received on any insurance policy;
  - (C) Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;
  - (D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
  - (E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;
  - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;
  - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy;
  - (H) Misrepresents any insurance policy as being shares of stock;
  - (I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or
  - (J) Publishes or advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person’s insurance business, which is untrue, deceptive, or misleading.
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Boycott, coercion, and intimidation.
  - (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; or
  - (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.

- (5) False financial statements.
  - (A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer; or
  - (B) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.
- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
- (7) Unfair discrimination.
  - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract;
  - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the ~~term~~ terms or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder;
  - (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:
    - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
    - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
  - (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

- (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
  - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
- (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;
- (F) To terminate, modify coverage, or refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to disability insurance sold by a casualty insurer; provided further that this ~~subsection~~ subparagraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;
- (G) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance; or
- (H) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because the individual refuses to consent to the release of information which is confidential as provided in section 325-101; provided that nothing in this subparagraph shall prohibit an insurer from obtaining and using the results of a test satisfying the requirements of the commissioner, which was taken with the consent of an applicant for insurance; provided further that any applicant for insurance who is tested for HIV infection shall be afforded the opportunity to obtain the test results, within a reasonable time after being tested, and that the confidentiality of the test results shall be maintained as provided by section 325-101.
- (8) Rebates. Except as otherwise expressly provided by law:
  - (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to the contract other than as plainly expressed in the contract, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits, or any valuable consideration or inducement not specified in the contract; or
  - (B) Giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract.
- (9) Nothing in paragraph (7) or (8) shall be construed as including within the definition of discrimination or rebates any of the following practices:

- (A) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance; provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;
  - (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;
  - (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year; and
  - (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this article.
- (10) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that:
- (A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10; and
  - (B) This paragraph shall not apply to entities licensed under chapter 386, 431:10C, 432, or 432D.
- (11) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
- (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
  - (B) With respect to claims arising under its policies, failing to respond with reasonable promptness, in no case more than fifteen working days, to communications received from:
    - (i) The insurer's policyholder;
    - (ii) Any other persons, including the commissioner; or
    - (iii) The insurer of a person involved in an incident in which the insurer's policyholder is also involved.

The response shall be more than an acknowledgment that such person's communication has been received, and shall adequately address the concerns stated in the communication;
  - (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
  - (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
  - (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
  - (F) Failing to offer payment within thirty calendar days of affirmation of liability, if the amount of the claim has been determined and is not in dispute;
  - (G) Failing to provide the insured, or when applicable the insured's beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported;

- (H) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
  - (I) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
  - (J) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
  - (K) Attempting to settle claims on the basis of an application which was altered without notice, knowledge, or consent of the insured;
  - (L) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
  - (M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
  - (N) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
  - (O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;
  - (P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; and
  - (Q) Indicating to the insured on any payment draft, check, or in any accompanying letter that the payment is "final" or is "a release" of any claim if additional benefits relating to the claim are probable under coverages afforded by the policy; unless the policy limit has been paid or there is a bona fide dispute over either the coverage or the amount payable under the policy.
- (12) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination under section 431:2-302. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this section, "complaint" means any written communication primarily expressing a grievance.
- (13) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, ~~[agent, broker,]~~ producer, or individual."

SECTION 82. Section 431:14-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This article shall not apply to:

- (1) Reinsurance, other than joint reinsurance to the extent stated in section 431:14-112;
- (2) ~~[Disability insurance;]~~ Accident and health or sickness insurance;
- (3) Insurance against loss or damage to aircraft or against liability, other than workers’ compensation and employers’ liability, arising out of the ownership, maintenance, or use of aircraft;
- (4) Insurance of vessels or craft, their cargoes, marine builder’s risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; and
- (5) Insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance, or use of aircraft.”

SECTION 83. Section 431:15-104, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In addition to other grounds for jurisdiction provided by the law of this State, a court of this State having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Hawaii Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this State:

- (1) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the ~~[agent or broker;]~~ producer, in any action on or incident to the obligation; ~~[or]~~
- (2) If the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is ~~[an agent or broker]~~ a producer of or for the reinsurer, in any action on or incident to the reinsurance contract; or
- (3) If the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from such a relationship with the insurer.”

SECTION 84. Section 431:15-303, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, ~~[broker;]~~ producer, employee, or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.”

SECTION 85. Section 431:15-311, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible by:

- (1) First class mail and either by telegram or telephone to the commissioner of each jurisdiction in which the insurer is doing business;
- (2) First class mail to any guaranty association or foreign guaranty association who is or may become obligated as a result of the liquidation;
- (3) First class mail to all insurance ~~[agents]~~ producers of the insurer;



- (4) First class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and
- (5) Publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.”

SECTION 86. Section 431:15-312, Hawaii Revised Statutes, is amended by amending the title and subsections (a) and (b) to read as follows:

**“§431:15-312 Duties of ~~[agents.]~~ producers.** (a) Every person who receives notice in the form prescribed in section 431:15-311 that an insurer whom the ~~[agent]~~ producer represents is the subject of a liquidation order, shall within fifteen days of such notice give notice of the liquidation order. The notice shall be sent by first class mail to the last address contained in the ~~[agent’s]~~ producer’s records to each policyholder or other person named in any policy issued through the ~~[agent]~~ producer by the insurer, if the ~~[agent]~~ producer has a record of the address of the policyholder or other person. A policy shall be deemed issued through ~~[an agent]~~ a producer if the ~~[agent]~~ producer has a property interest in the expiration of the policy, or if the ~~[agent]~~ producer has had possession of a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the ~~[agent,]~~ producer, identification of the policy impaired and the nature of the impairment including termination of coverage, as described in section 431:15-308. Notice by a ~~[general agent]~~ producer satisfies the notice requirement for any ~~[agents]~~ producers under contract to it. Each ~~[agent]~~ producer obligated to give notice under this section shall file a report of compliance with the liquidator.

(b) Any ~~[agent]~~ producer failing to give notice or file a report of compliance as required in subsection (a) may be subject to payment of a penalty of not more than \$1,000 and such ~~[agent’s]~~ producer’s license may be suspended, ~~[said]~~ the penalty to be imposed after a hearing held by the commissioner.”

SECTION 87. Section 431:15-323, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[An agent, broker,]~~ A producer premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any unpaid collected premium held by such person at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. ~~[An agent, broker,]~~ A producer premium finance company, or any other person shall have no obligation to pay an uncollected, unpaid, unearned premium to the liquidator. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission actually paid or credited to such person. Credits or setoffs or both shall not be allowed to ~~[an agent, broker,]~~ a producer or premium finance company for any amounts advanced to the insurer by the ~~[agent, broker,]~~ producer or premium finance company on behalf of, but in the absence of a payment by, the insured. An insured shall be obligated to pay any unpaid, earned premium due the insurer at the time of the declaration of insolvency as shown on the records of the insurer.”

SECTION 88. Section 431:15-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under section

431:15-404(c), be vested by operation of law with the title to all of the assets, property, contracts, and rights of action, [~~agents'~~ producers'] balances, and all of the books, accounts, and other records of the insurer located in this State. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from [~~agents~~] producers and to obtain possession of the books, accounts, and other records of the insurer located in this State. The domiciliary liquidator shall also have the right to recover all other assets of the insurer located in this State, subject to section 431:15-404."

SECTION 89. Section 431:16-103, Hawaii Revised Statutes, is amended to read as follows:

**"§431:16-103 Scope.** This part shall apply to all types of direct insurance, but shall not apply to the following:

- (1) Life, annuity, [~~health, or disability~~] accident and health or sickness insurance;
- (2) Mortgage guaranty, financial guaranty, or any other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, for indemnification for the repair, replacement, or service for the operational or structural failure of the goods or property due to a defect in materials, artisanship, or normal wear and tear, or for reimbursement for the liability incurred by the issuer of agreements or service contracts that provide those benefits;
- (6) Title insurance;
- (7) Ocean marine insurance;
- (8) Any transaction or combination of transactions between a person (including affiliates of the person) and an insurer (including affiliates of the insurer) that involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or
- (9) Any insurance provided by or guaranteed by government."

SECTION 90. Section 431:16-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each member insurer shall annually recoup the assessments paid in the preceding years by the insurer under this part. The recoupment shall be recovered by means of a surcharge on premiums charged for policies for all kinds of insurance, except life, title, surety, [~~disability,~~] accident and health or sickness, credit mortgage guaranty, and ocean marine. Prior to recoupment, each member insurer shall submit its plan for recoupment to the commissioner for approval. The surcharge shall be at a uniform percentage rate reasonably calculated to recoup the assessment paid by the member insurer. Any excess recovery by a member insurer shall be credited pro rata to that member insurer's policyholders' premiums in the succeeding year unless there has been a subsequent assessment, in which case the excess will be used to pay the amount of the subsequent assessment. If a member insurer fails to recoup the entire amount of its assessment in the first year under the procedure provided in this

section, it may repeat the procedure in succeeding years until the full assessment is recouped.”

SECTION 91. Section 431:16-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The purpose of this part is to protect, subject to certain limitations, the persons specified in section 431:16-203 against failure in the performance of contractual obligations, under life and ~~[disability]~~ accident and health or sickness insurance policies and annuity contracts specified in section 431:16-203(b), because of the impairment or insolvency of the member insurer that issued the policies or contracts.”

SECTION 92. Section 431:16-203, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

- “(b) (1) This part shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, ~~[disability,]~~ accident and health or sickness, annuity, and supplemental policies or contracts, for certificates under direct group policies and contracts, except as limited by this part.
- (2) This part shall not provide coverage for:
  - (A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;
  - (B) Any policy or contract of reinsurance, unless assumption certificates have been issued;
  - (C) Any portion of a policy or contract to the extent that the rate of interest on which it is based:
    - (i) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody’s Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and
    - (ii) On or after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody’s Corporate Bond Yield Average as most recently available;
  - (D) Any plan or program of an employer, association, or similar entity to provide life, ~~[disability,]~~ accident and health or sickness, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:
    - (i) A Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;
    - (ii) A minimum premium group insurance plan;
    - (iii) A stop-loss group insurance plan; or
    - (iv) An administrative services only contract;
  - (E) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or

contract holder, in connection with the service to or administration of such policy or contract;

- (F) Any policy or contract issued in this State by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this State; and
- (G) Any annuity contract or group annuity certificate which is not issued to or owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

(c) The benefits for which the association may become liable shall in no event exceed the lesser of:

- (1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer, or
  - (2) With respect to any one life, regardless of the number of policies or contracts:
    - (A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;
    - (B) \$100,000 in ~~[disability]~~ accident and health or sickness insurance benefits, including any net cash surrender and net cash withdrawal values;
    - (C) \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;
- [Provided, however,] provided that in no event shall the association be liable to expend more than \$300,000 in the aggregate with respect to any one life under subparagraphs (A), (B), and (C)."

SECTION 93. Section 431:16-206, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created a nonprofit legal entity to be known as the Hawaii Life and Disability Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved under section 431:16-210 and shall exercise its powers through a board of directors established under section 431:16-207. For purposes of administration and assessment the association shall maintain three accounts:

- (1) The life insurance account;
- (2) The ~~[disability]~~ accident and health or sickness insurance account; and
- (3) The annuity account."

SECTION 94. Section 431:16-208, Hawaii Revised Statutes, is amended as follows:

- (1) By amending subsections (b), (c), and (d) to read as follows:
  - "(b) (1) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in ~~subsection (b)(2),~~ paragraph (2), the association shall, in its discretion, either:
    - (A) Take any of the actions specified in subsection (a), subject to the conditions therein, or
    - (B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for: ~~[disability]~~ accident and health or sickness claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy

or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

- (2) The association shall be subject to the requirements of ~~subsection (b)(1)~~ paragraph (1) only if:
  - (A) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations;
    - (i) The delinquency proceeding shall not be dismissed[-];
    - (ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management[-]; and
    - (iii) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored[-]; and
  - (B)
    - (i) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this State, or;
    - (ii) If the impaired insurer is a foreign or alien insurer:
      - (I) It has been prohibited from soliciting or accepting new business in this State,
      - (II) Its certificate of authority has been suspended or revoked in this State, and
      - (III) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.
- (c) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:
  - (1)
    - (A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or
    - (B) Assure payment of the contractual obligations of the insolvent insurer; and
    - (C) Provide such moneys, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or
  - (2) With respect only to life and ~~[disability]~~ accident and health or sickness insurance policies, provide benefits and coverages in accordance with subsection (d).
- (d) When proceeding under ~~subsections~~ subsection (b)(1)(B) or (c)(2), the association shall, with respect to only life and ~~[disability]~~ accident and health or sickness insurance policies:
  - (1) Assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the policies of the insolvent insurer, for claims incurred:
    - (A) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies;
    - (B) With respect to individual policies, not later than the earlier of the next renewal date (if any) under such policies or one year, but in

- no event less than thirty days, from the date on which the association becomes obligated with respect to such policies.
- (2) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty days' notice of the termination of the benefits provided; and
  - (3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with ~~[the provisions of subsection (4)(4),]~~ paragraph (4), if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.
  - (4) (A) In providing the substitute coverage required under ~~[subsection (4)(3),]~~ paragraph (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy.
  - (B) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.
  - (C) The association may reinsure any alternative or reissued policy.
  - (5) (A) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.
  - (B) Alternative policies shall contain at least the minimum statutory provisions required in this State and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.
  - (C) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
  - (6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.
  - (7) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association."
  - (2) By amending subsection (n) to read as follows:  
 "(n) The association may:
    - (1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part;

- (2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 431:16-209 and to settle claims or potential claims against it;
- (3) Borrow money to effect the purposes of this part; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
- (4) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this part;
- (5) Take such legal action as may be necessary to avoid payment of improper claims; and
- (6) Exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or ~~[disability]~~ accident and health or sickness insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this part."

SECTION 95. Section 431:16-218, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) The document prepared under subsection (b) shall contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall:

- (1) State the name and address of the Hawaii Life and Disability Insurance Guaranty Association and the insurance division;
- (2) Prominently warn the policy or contract holder that the Hawaii Life and Disability Insurance Guaranty Association may not cover the policy or, if coverage is available, it will be subject to substantial limitations~~[-]~~ and exclusions and be conditioned on continued residence in this State;
- (3) State that the insurer and its ~~[agents]~~ producers are prohibited by law from using the existence of the Hawaii Life and Disability Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;
- (4) Emphasize that the policy or contract holder should not rely on coverage under the Hawaii Life and Disability Insurance Guaranty Association when selecting an insurer; and
- (5) Provide other information as directed by the commissioner.

(d) No insurer or ~~[agent]~~ producer may deliver a policy or contract described in section 431:16-203(b)(1) and excluded under section 431:16-203(b)(2)(A) from coverage under this part unless the insurer or ~~[agent;]~~ producer, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Hawaii Life and Disability Insurance Guaranty Association. The commissioner shall by rule specify the form and content of the notice."

SECTION 96. Section 431:20-103, Hawaii Revised Statutes, is amended to read as follows:

**"§431:20-103 General insurance law applicable.** The following provisions shall apply to title insurance and to title insurers:

- (1) Section 431:1-103 and section 431:1-105;
- (2) Section 431:1-212, section 431:1-213, and section 431:1-214;
- (3) Section 431:2-101 to section 431:2-106, and section 431:2-108 to section 431:2-110;

- (4) Section 431:2-201 to section 431:2-204, and section 431:2-207 to section 431:2-212;
- (5) Section 431:2-302, section 431:2-303, section 431:2-305, and section 431:2-306;
- (6) Section 431:3-101 to section 431:3-105;
- (7) Section 431:3-201 to section 431:3-203, section 431:3-205, section 431:3-206, and section 431:3-209 to section 431:3-220;
- (8) Section 431:3-301, section 431:3-305, section 431:3-307, and section 431:3-308;
- (9) Section 431:4-102 to section 431:4-127;
- (10) Section 431:4-202 to section 431:4-207;
- (11) Section 431:5-101;
- (12) Section 431:5-201 to section 431:5-203;
- (13) Section 431:5-305, section 431:5-306, and section 431:5-308 to section 431:5-311;
- (14) Article 6;
- (15) Article 7;
- (16) Article 9;
- (17) Article 9A;
- [~~(17)~~] (18) Section 431:10-211, section 431:10-216 to section 431:10-218, section 431:10-220, section 431:10-221, section 431:10-224, section 431:10-225, and section 431:10-235 to section 431:10-238;
- [~~(18)~~] (19) Article 13; and
- [~~(19)~~] (20) Article 15.”

SECTION 97. Section 431:21-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The plan of operation shall:

- (1) Establish procedures for performance of all the powers and duties of the association under section 431:21-105;
- (2) Establish maximum limits of liability to be placed through the association;
- (3) Establish reasonable underwriting standards for determining insurability of a risk which are comparable to the standards used to determine insurability of a risk located outside the area designated by the commissioner as eligible for association coverage;
- (4) Establish a schedule of deductibles, if appropriate;
- (5) Establish the commission to be paid to licensed ~~[agents;]~~ producers;
- (6) Establish the rates to be charged for the insurance coverages, so that the total premium income from all association policies, when combined with the investment income, shall annually fund the administration of the association. The administration of the association shall include the expenses incurred in processing applications, conducting inspections, issuing and servicing policies, paying commissions, and paying claims, but shall not include assessments approved by the commissioner;
- (7) Establish the manner and scope of the inspection and the form of the inspection report. The inspection guidelines may include setting minimum conditions the property must meet before an inspection is required;
- (8) Establish procedures whereby selections for the board of directors will be submitted to the commissioner for the commissioner’s information;
- (9) Establish procedures for records to be kept of all financial transactions of the association, its agents, and its board of directors;



- (10) Establish procedures by which applications will be received and serviced by the association;
- (11) Establish guidelines for the investigation and payment of claims; and
- (12) Establish procedures whereby the association may assume and cede reinsurance on risks written through the association.”

SECTION 98. Section 431K-3, Hawaii Revised Statutes, is amended to read as follows:

**“§431K-3 Risk retention groups not chartered in this State.** Risk retention groups chartered in states other than this State and seeking to do business as a risk retention group in this State shall observe and abide by the laws of this State as follows:

- (1) Before offering insurance in this State, a risk retention group shall submit to the commissioner:
  - (A) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner of this State may require to verify that the risk retention group is qualified as a risk retention group;
  - (B) A copy of its plan of operations or a feasibility study and revisions of this plan or study submitted to its state of domicile; provided that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which was:
    - (i) Defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., before October 27, 1986; and
    - (ii) Offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date; and
  - (C) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process;
- (2) Any risk retention group doing business in this State shall submit to the commissioner:
  - (A) A copy of the group’s financial statement submitted to the insurance commissioner of its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;
  - (B) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination in its state of domicile;
  - (C) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and
  - (D) Information as may be required to verify its continuing qualification as a risk retention group;
- (3) Taxation of risk retention groups shall be as follows:
  - (A) All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment

- as that applicable to risk retention group captives chartered in this State pursuant to chapter 431, article 19;
- (B) To the extent ~~[agents or brokers]~~ producers are utilized, the ~~[agents or brokers]~~ producers shall report and pay the taxes for the premiums for risks which the ~~[agents or brokers]~~ producers have placed with or on behalf of a risk retention group not chartered in this State; or
  - (C) To the extent ~~[agents or brokers]~~ producers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State; provided that each risk retention group shall report all premiums paid to it for risks insured within the State;
- (4) Any risk retention group shall comply with chapter 431, article 13 regarding deceptive, false, or fraudulent acts or practices, and unfair claims settlement practices; provided that if the commissioner seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction;
  - (5) Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this State. Any examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' Examiner Handbook;
  - (6) The following notice shall be printed in ten point type on the front page of every application for insurance from a risk retention group, and on the front page and the declaration page of every policy issued by a risk retention group:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and rules of your state. State insurance insolvency guaranty funds are not available for your risk retention group;

- (7) The following acts by a risk retention group are prohibited:
  - (A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and
  - (B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired;
- (8) No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies;
- (9) No risk retention group may offer insurance policy coverage prohibited by chapter 431 or declared unlawful by the highest court of this State; and
- (10) A risk retention group not chartered in this State and doing business in this State shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by any state insurance commissioner if there has been a finding of financial impairment after an examination under paragraph (5).''

SECTION 99. Section 431K-7.5, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~431K-7.5] Purchasing group taxation.** Premium taxes and taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group shall be:

- (1) Imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insurers; and
- (2) Paid first by that insurance source, and if not by that source, then by the [~~agent or broker~~] producer for the purchasing group, and if not by that [~~agent or broker~~] producer, then by the purchasing group, and if not by that purchasing group, then by each of its members.”

SECTION 100. Section 431K-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A purchasing group located in this State may not purchase insurance from a risk retention group that is not chartered in this State or from an insurer not authorized in this State, unless the purchase is effected through a licensed [~~agent or broker~~] producer acting pursuant to the surplus lines laws of the licensed [~~agent’s or broker’s~~] producer’s state of domicile.”

SECTION 101. Section 431P-14, Hawaii Revised Statutes, is amended to read as follows:

**“§431P-14 Immunity and limitation on liability.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, any servicing facility or its authorized insurance [~~agents,~~] producers; the fund or its agents, employees, or board; the State; the commissioner; or the commissioner’s representatives for any action taken by them in the performance of their powers and duties under this chapter; provided that this section shall not be construed to prohibit any exercise of the commissioner’s power pursuant to this chapter or any other law or rule adopted pursuant to law or chapters 661 and 662, any other law to the contrary notwithstanding. Nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity without regard to whether that person or entity received any benefits under this chapter, against the State, or its officers and employees. The State and its officers and employees shall not be liable for the results of any application, denial of application, claim, loss, or other benefits provided by the fund pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the State whatsoever, nor shall this chapter be construed as authorizing any claim against the fund in excess of any note, loan, liability, or other obligation incurred by the fund. Nothing in this section shall be construed to alter any obligation to pay assessments or charges authorized to be imposed or levied by the board pursuant to this chapter. The fund shall be subject to chapter 431 only as provided for in this chapter.”

SECTION 102. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) After each covered event, if the board shall determine that the moneys in the hurricane reserve trust fund, excluding moneys determined by the board to be needed to continue fund operations following that covered event, will be insufficient to pay claims and other obligations of the fund arising out of that covered event, the

Hawaii hurricane relief fund is authorized to levy a surcharge not to exceed seven and one-half per cent a year on premiums charged for all property and casualty insurance policies issued for risks insured in this State. These moneys may be deposited into the hurricane reserve trust fund or into trust or custodial accounts, created for the benefit of the fund's secured parties, that are held inside or outside the hurricane reserve trust fund. The formula to calculate the amount and period of the surcharge for each covered event and the procedures and methodology for payment of claims and other obligations of the fund shall be provided in the plan of operation and the surcharge may remain in effect until all claims and other obligations of the fund, including but not limited to claims financing transactions, bonds, notes, and other obligations arising out of that covered event, shall have been fully discharged. The amount and reason for any surcharge made pursuant to this subsection shall be separately stated on any billing sent to an insured. The surcharge shall not be considered premiums for any other purpose, including the computation of gross premium tax or the determination of ~~[agents']~~ producers' commissions."

SECTION 103. Section 432:1-105, Hawaii Revised Statutes, is amended to read as follows:

**"§432:1-105 Penalty.** There shall be a fine of not more than \$1,000 or imprisonment of not more than one year, or both, for:

- (1) Any person who is found in the State as officer, member, principal, agent, ~~[solicitor,]~~ or in any other capacity, soliciting or conducting or operating the business of a mutual benefit society, as defined in section 432:1-104, not qualified and licensed to operate the business in conformity with this article, or
- (2) Any trustee, officer, or other person in charge of the affairs of any such society, who authorizes, sanctions, or permits the issuance of any certificate, policy, or contract, for the payment of benefits in violation of this article, or
- (3) Any person who violates any other provision of this article relating to mutual benefit societies."

SECTION 104. Section 432:2-609, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Fraternal benefit society producers shall be licensed in accordance with the provisions governing producers in article 9A of chapter 431, except that the appointment shall be made by the fraternal benefit society. Fraternal benefit society producers are not prohibited from obtaining additional licenses provided for in article ~~[9.]~~ 9A. No examination shall be required of an individual licensed to represent a fraternal benefit society prior to July 1, 1988."

SECTION 105. Section 435C-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) (1) Any licensed physician or hospital shall, on or after the effective date of the plan of operation, apply to the plan for such coverage. Such application may be made on behalf of an applicant by a ~~[solicitor, subagent or general agent]~~ producer authorized by the applicant.
- (2) If the plan determines that the applicant meets the underwriting standards of the plan as provided in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance (as shown by the insured having failed to make written objection to the premium charges within thirty days after billing), then the plan, upon receipt of the premium, or such portion thereof as is prescribed in

the plan of operation, shall cause to be issued a policy of medical malpractice insurance for a term of one year.”

SECTION 106. Section 435C-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§435C-8]]~~ **Privileged communications.** There shall be no liability on the part of, and no cause of action of any nature shall arise against the plan, its agents or employees, an insurer, any ~~[licensed agent,]~~ producer, or the insurance commissioner or the commissioner’s authorized representatives, for any statements made in good faith by them in any reports or communications concerning risks insured or to be insured by the plan, or at any administrative hearing conducted in connection therewith.”

SECTION 107. Section 431:9-214, Hawaii Revised Statutes, is repealed.

SECTION 108. Part III of article 9 of chapter 431, Hawaii Revised Statutes, is repealed.

SECTION 109. In codifying the new sections added to chapter 431, Hawaii Revised Statutes, by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated and referred to in this Act.

SECTION 110. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 111. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

**Notes**

1. Prior to amendment 431:8-102 appeared here.
2. Edited pursuant to HRS §23G-16.5.

**ACT 156**

S.B. NO. 2926

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the department of education has not fulfilled its duties as an employer to ensure that the educational officers who comprise the department’s leadership are properly classified and compensated.

The department continues to report a labor shortage of educational officers and has taken the interim measure of temporarily assigning teachers who are not certified as administrators to serve as a significant portion of its vice-principal workforce. These actions illustrate that the department continues to take a reactive approach to addressing its needs, rather than developing and implementing a market-based recruitment and retention plan for educational officers.

The legislature further finds that the department has also failed to design a comprehensive leadership training program that identifies and tracks teachers as potential educational leaders, or allows vice-principals to develop leadership abilities through education in leadership theories and practices. Instead, the leadership

training functions in the department has been disconnected into various programs that have no cohesiveness.

The legislature further finds that Act 188, Session Laws of Hawaii 2001, required the department of education to conduct a study, in consultation with the University of Hawaii and the department of human resources development, to better assess positions, allocations, and classifications with respect to the salary structure of educational officers. However, to date, the legislature has not received the results of this study.

Accordingly, the purpose of this Act is to require the department of education to complete a comprehensive occupational validation study of educational officers.

SECTION 2. (a) The department of education shall conduct a comprehensive occupational validation study of all educational officers that includes the following:

- (1) A determination of whether the responsibilities, duties, and required competencies of educational officers are valid and in compliance with federal and state employment laws, regulations, and professional human resources standards;
- (2) A determination of whether the educational officer class should continue to include principals and vice-principals as well as business administration positions in areas such as accounting, budgeting, procurement, payroll, information and technology services, civil rights compliance communication, human resources and development, school repair and maintenance, and teacher certification;
- (3) A determination of whether the current minimum qualifications for school administrators and business administrators are valid and necessary to predict successful job performance;
- (4) A determination of whether noncompliance with section 76-16(b)(11), Hawaii Revised Statutes, which limits the exemption of not more than twenty non-certificated administrative, technical, and professional personnel is justified, as there are currently more than three hundred such positions;
- (5) Recommendations for action related to the determination made in (4);
- (6) The identification of artificial barriers to employment for educational officers which are prohibited by the Federal Uniform Guidelines or Employee Selection Procedures issued in August 1978, or which are contrary to accepted principles and practices in public administration of human resources, including but not limited to the following:
  - (A) A determination whether school administrator certification or licensure is a minimum competency requirement or desirable in consideration of the current shortage of qualified administrator candidates;
  - (B) A review and evaluation of all statutes, administrative rules, standards, policies, guidelines, and procedures related to the recruitment, retention, and salary structure of educational officers;
  - (C) A review and evaluation of the current collective bargaining agreements, all memoranda or letters of agreement, and departmental policies for compliance with section 89-9, Hawaii Revised Statutes, as amended by Act 253, SLH 2000; and
  - (D) Evaluation and determination of what educational administration work experience is valid as a prerequisite for successful performance of each business administration function;
- (7) An evaluation of whether the department of education's current dichotomy of recruitment and retention functions for certificated school

personnel and civil service personnel is warranted, and identification of functions that can be consolidated to improve efficiency and effectiveness;

- (8) An evaluation of the principal and vice principal positions to determine if they should be twelve-month positions;
- (9) The development of an information and technology plan that integrates databases for human resources, budget, accounting, procurement, payroll functions, and identification of resources needed to implement the plan;
- (10) The development of written class specifications that do not currently exist; and
- (11) The identification of statutory barriers and recommendations for statutory amendments to enable the department to effectively modify the educational officer class.

(b) The department of education shall develop and implement a market-based recruitment and retention plan for educational officers, with an emphasis on recruitment and retention of school administrators.

(c) The department of education shall provide interim reports to the legislature on its progress with the requirements of this Act, and shall submit its final report to the legislature no later than twenty days prior to the regular session of 2003.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

## ACT 157

S.B. NO. 3040

A Bill for an Act Relating to Captive Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:19-101.2, Hawaii Revised Statutes, is amended to read as follows:

**“[§431:19-101.2] Confidential treatment.** (a) ~~Except as otherwise provided in subsection (b), all nonpublic [financial] information [of] in a captive insurance [company,] company’s application for licensure, its business plan, or of its parent[,], or the parent’s member organizations, [or a risk retention captive insurance company,] and all other nonpublic information disclosed to the commissioner pursuant to this article, shall be given confidential treatment and shall not be made public by the commissioner. [without the prior written consent of the captive insurer, its parent company, or the member organization, or risk retention captive insurer to which it pertains.~~

~~(b) The commissioner may disclose nonpublic financial information of a captive insurance company, its parent, or the parent’s member organizations, or a risk retention captive insurance company, to insurance departments of other states without prior consent of the captive insurer, its parent company, or the parent’s member organization, or the risk retention captive insurer to which it pertains.~~

~~(c) In the event~~ (b) If the commissioner determines that the interest of the policyholders, shareholders, or the public will be served by making the information public, then after giving the captive insurance company and its parent or the parent’s member organizations~~[, or the risk retention captive insurer]~~ that would be affected thereby, three days written notice of intent, and unless otherwise contrary to law, the

commissioner may make public all or any part of the nonpublic ~~[financial]~~ information in a manner that the commissioner deems appropriate~~[-]~~; provided that the commissioner may disclose nonpublic information to courts of competent jurisdiction, and insurance departments or regulatory agencies of other competent jurisdictions without prior notification to the person to whom the information pertains.

~~[(d)]~~ (c) For purposes of this section:

“Equity securities” means:

- (1) A share in a corporation, whether or not transferable or denominated a “stock”, or similar security evidencing an ownership interest in the person;
- (2) The interest of a limited partner in a limited partnership;
- (3) The interest of a partner in a partnership, including a joint venture; or
- (4) A warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in paragraph (1), (2), or (3).

“Nonpublic ~~[financial]~~ information” means information ~~[regarding a person’s financial condition]~~ that, prior to disclosure to the commissioner pursuant to this article is ~~[not]~~, or was:

- (1) Not a public record as defined in rule 1001(5) of section 626-1; or
- (2) Not a government record that must be disclosed under section 92F-12;

provided that in the case of a person whose equity securities are collectively owned and held by thirty-six or more persons, “nonpublic ~~[financial]~~ information” does not include financial information disclosed to owners and holders of equity securities.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 2002.)

## ACT 158

S.B. NO. 3041

A Bill for an Act Relating to the Department of Education Storeroom Revolving Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-1304, Hawaii Revised Statutes, is repealed.

SECTION 2. The superintendent of education shall transfer any unexpended and unencumbered funds remaining in the storeroom revolving fund as of December 31, 2002, to the general fund.

SECTION 3. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 4. This Act shall take effect on December 31, 2002.

(Approved June 7, 2002.)

### Note

1. Edited pursuant to HRS §23G-16.5.



A Bill for an Act Establishing a Commission to Celebrate the One-Hundredth Anniversary of the Arrival of Filipinos to Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that members of the Filipino community have contributed significantly and substantially to Hawaii. Since the arrival of the first Filipinos to Hawaii in 1906, the rich culture and proud heritage of the Filipino people have been and continue to be a positive influence upon life in Hawaii. The year 2006 will mark the one-hundredth anniversary of their arrival in Hawaii. In recognition of the great contributions of Filipinos to Hawaii's diverse and multicultural society, a celebration to commemorate their arrival and subsequent achievements in Hawaii is appropriate.

The purpose of this Act is to provide for the celebration of the centennial anniversary of the Filipino people in Hawaii.

SECTION 2. There is established a temporary commission to be known as the Filipino centennial celebration commission which shall have charge of all arrangements for the commemoration of the centennial anniversary of the arrival of the first Filipinos to Hawaii. The commission shall be placed within the office of the governor for administrative purposes and shall cease to operate after December 31, 2006.

SECTION 3. The commission shall consist of fifteen members of the Filipino community to be appointed by the governor without regard to section 26-34, Hawaii Revised Statutes. The members shall represent government, labor, business, culture and the arts, and the community at large. The governor shall designate the chair of the commission from among the appointed members. An individual appointed to another commission is eligible to be appointed as a member of this commission.

The members shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.

Any member of the commission shall be immune from civil liability as provided for under section 26-35.5, Hawaii Revised Statutes.

SECTION 4. The commission shall:

- (1) Prepare an overall program to celebrate the centennial anniversary of the arrival of the Filipino people in Hawaii, their significant contributions to the development of this State, and their culture and heritage;
- (2) Identify a nonprofit organization that will be responsible for any monies received or expended for the centennial anniversary celebration; and
- (3) Develop, plan, and coordinate the various program activities that are to be scheduled throughout the year of the celebration and shall encourage the participation of all segments of the Filipino community.

In fulfilling its responsibilities, the commission shall consult, cooperate with, and seek advice from appropriate Filipino organizations and agencies.

SECTION 5. The commission may seek grants from public and private sources and may accept donations to finance the projects, programs, and activities of the centennial anniversary celebration. Any funds received by the commission shall

be turned over to the nonprofit organization responsible for any moneys received or expended for the centennial anniversary celebration.

Chapter 42F, Hawaii Revised Statutes, shall not apply to any grant or subsidy made pursuant to this Act by the legislature.

All property acquired by the commission shall be deposited for preservation in the Hawaii state public library system, museums, and public archives or shall otherwise be disposed of as directed by the commission.

SECTION 6. At the end of its term, the commission shall submit to the governor a final report of all its activities, including an accounting of all moneys received and disbursed. The report shall include a description of:

- (1) The production, publication, and distribution of books, films, and other educational materials on the life and experiences of Filipinos in Hawaii;
- (2) Conferences, conventions, lectures, and seminars; and
- (3) Traveling exhibits, other exhibits, ceremonies, theatrical productions, and other special events commemorating the anniversary.

SECTION 7. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

## ACT 160

S.B. NO. 594

A Bill for an Act Relating to Neurotrauma.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that every year two million six hundred sixty thousand Americans experience neurotrauma injury. About half of these cases result in short-term disability. Of neurotrauma injury survivors, three hundred seventy-five thousand to ninety thousand endure life-long debilitating losses of function.

Neurotrauma injury is defined as:

A severe chronic disability of a person that is attributable to an injury to the central nervous system, such as traumatic brain injury and spinal cord injury, and likely to continue indefinitely. Neurotrauma can include other neurological dysfunctions but does not include substance misuse and abuse, Alzheimer's disease, or the infirmities of aging. Neurotrauma or other neurological deficits result in substantial functional limitations in two or more of the following areas:

- (1) Self-care;
- (2) Speech, hearing, or communication;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living; and
- (7) Economic sufficiency.

The legislature further finds that the physical consequences of neurotrauma injury include impairment of speech, vision and hearing loss, headaches, muscle spasticity, paralysis, and seizure disorders. The cognitive consequences of neurotrauma injury may include memory deficit, limited concentration, impaired perception and communication, and difficulties with reading, writing, planning, and

judgment. The psychosocial-behavioral-emotional consequences of neurotrauma injury include fatigue, mood swings, denial, anxiety, depression, lack of motivation, and decreased social skills.

Advances in neurosurgery and rehabilitation therapy have dramatically increased the number of individuals who survive neurotrauma injury and have made the hope of returning to the community more realistic. However, little has been done to assist neurotrauma injury survivors to adjust to life after the injury.

In Hawaii, the Hawaii Health Information Corporation estimates that thirty-five hundred people are discharged annually from Hawaii's hospitals with neurotrauma injuries. The State also lacks effective and affordable treatment and rehabilitation programs and community support to facilitate independent living. Support programs for family members and caregivers are also lacking.

In 1997, the legislature passed Act 333 that created the state traumatic brain injury advisory board to advise the department of health in the development and implementation of a comprehensive plan to address the needs of persons affected by disorders of the brain. As a result of the board's effective actions, it became clear that there exists a large community within Hawaii of individuals with neurotrauma injuries. To best address the health of Hawaii's citizens and specifically the needs of individuals with neurotrauma disabilities, it is necessary to create a neurotrauma advisory board, with a strong mandate to advise the department on programs and resources to effectively meet the needs of these constituents.

As a subset of the neurotrauma board, the traumatic brain injury advisory board would continue to exist and advocate on behalf of the individuals affected by disorders and disabilities of the brain, and would advise the Department of Health in consultation with the newly created neurotrauma board.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER NEUROTRAUMA**

**§ -1 Definitions.** As used in this chapter, unless the context requires otherwise:

“Board” means the neurotrauma advisory board established under section -3.

“Department” means department of health.

“Director” means the director of health.

“Neurotrauma” means a severe chronic disability of a person that is attributable to an injury to the central nervous system, such as traumatic brain injury and spinal cord injury, and likely to continue indefinitely. Neurotrauma can include other neurological dysfunctions but does not include substance misuse and abuse, Alzheimer's disease, or the infirmities of aging. Neurotrauma or other neurological deficits result in substantial functional limitations in two or more of the following areas:

- (1) Self-care;
- (2) Speech, hearing, or communication;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living; and
- (7) Economic sufficiency.

§ **-2 Neurotrauma system.** The department of health shall develop, lead, administer, coordinate, monitor, evaluate, and set direction for a comprehensive system to support and provide services for survivors of neurotrauma injuries.

§ **-3 Neurotrauma advisory board.** (a) There is established within the department a neurotrauma advisory board to advise the director in implementing this chapter.

(b) The board shall consist of twenty-one members to be appointed by the director. The director shall designate a member to be the chairperson of the advisory board. The director or a designee shall serve as an ex officio nonvoting member of the advisory board. The members shall serve for a term of four years; provided that upon the initial appointment of members, five shall be appointed for a term of one year, five for a term of two years, five for a term of three years, and six for a term of four years. In establishing the advisory board, the director shall appoint:

- (1) Five survivors of neurotrauma or their family members (two each for traumatic brain injuries and spinal cord injuries);
- (2) Two members of the Brain Injury Association of Hawaii;
- (3) One member representing the state traumatic brain injury advisory board;
- (4) Three members representing private sector businesses that provide services for neurotrauma survivors;
- (5) One member representing trauma centers that provide services for neurotrauma survivors;
- (6) Two members of the Spinal Cord Association;
- (7) Two representatives for persons with stroke; and
- (8) Five at-large members.

(c) The members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, that are necessary for the performance of their duties.

§ **-4 Neurotrauma special fund.** (a) There is established the neurotrauma special fund to be administered by the department with advisory recommendations from the neurotrauma advisory board. The fund shall consist of:

- (1) Moneys raised pursuant to the surcharges levied under sections 291-11.5, 291-11.6, 291C-12, 291C-12.5, 291C-12.6, 291C-102, and 291E-61;
- (2) Federal funds granted by Congress or executive order, for the purpose of this chapter; provided that the acceptance and use of federal funds shall not commit state funds for services and shall not place an obligation upon the legislature to continue the purpose for which the federal funds are made available; and
- (3) Funds appropriated by the legislature for the purpose of this chapter.

(b) The fund shall be used for the purpose of funding and contracting for services relating to neurotrauma as follows:

- (1) Education on neurotrauma;
- (2) Assistance to individuals and families to identify and obtain access to services;
- (3) Creation of a registry of neurotrauma injuries within the State to identify incidence, prevalence, individual needs, and related information; and
- (4) Necessary administrative expenses to carry out this chapter not to exceed two per cent of the total amount collected.

(c) Moneys in the neurotrauma special fund may be appropriated to obtain federal and private grant matching funds, subject to section -4(a)(2).

(d) In administering the fund, the director shall maintain records of all expenditures and disbursements made from the neurotrauma special fund.

(e) The director shall submit to the legislature an annual report on the activities under the neurotrauma special fund no later than twenty days prior to the convening of each regular session.

§ -5 Rules. The director may adopt rules under chapter 91 necessary to carry out this chapter.”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs’ special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649;
- (27) High technology special fund under section 206M-15.5;
- (28) Public schools special fees and charges fund under section 302A-1130(f);
- (29) Cigarette tax stamp enforcement special fund established by section 28-14;
- (30) Cigarette tax stamp administrative special fund established by section 245-41.5; [and]
- (31) Tobacco enforcement special fund established by section 28-15; and

(32) Neurotrauma special fund under section -4;  
shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special out-of-school time instructional program fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Domestic violence prevention special fund under section 321-1.3;
- (9) Spouse and child abuse special account under section 346-7.5;
- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees’ retirement system created by section 88-109;
- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital and operations special fund established under section 206X-10.5;
- (15) Hawaii health systems corporation special funds;
- (16) Tourism special fund established under section 201B-11;
- (17) Compliance resolution fund established under section 26-9;
- (18) Universal service fund established under chapter 269;
- (19) Integrated tax information management systems special fund under section 231-3.2;
- (20) Insurance regulation fund under section 431:2-215;
- (21) Hawaii tobacco settlement special fund under section 328L-2;
- (22) Emergency and budget reserve fund under section 328L-3;
- (23) Probation services special fund under section 706-649;
- (24) High technology special fund under section 206M-15.5;
- (25) Public schools special fees and charges fund under section 302A-1130(f);
- (26) Cigarette tax stamp enforcement special fund established by section 28-14;
- (27) Cigarette tax stamp administrative special fund established by section 245-41.5; [and]
- (28) Tobacco enforcement special fund established by section 28-15; and
- (29) Neurotrauma special fund under section -4;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 5. Section 291-11.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Violation of this section shall be considered an offense as defined under section 701-107(5) and shall subject the violator to the following penalties:

- (1) For a first conviction, the person shall:
  - (A) Be fined not more than \$100;
  - (B) Be required by the court to attend a child passenger restraint system safety class conducted by the division of driver education; provided that:
    - (i) The class may include video conferences as determined by the administrator of the division of driver education as an alternative method of education; and
    - (ii) The class shall not exceed four hours; [and]
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund;
- (2) For a conviction of a second offense, the person shall:
  - (A) Be fined not more than \$200;
  - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class; [and]
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education; and<sup>1</sup>
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; and
- (3) For a conviction of a third or subsequent offense, the person shall:
  - (A) Be fined not more than \$500;
  - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class; [and]
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education[-]; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund.”

SECTION 6. Section 291-11.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A person who fails to comply with the requirements of this section shall be subject to a fine of \$45 for each violation[-] and a surcharge of \$10 which shall be deposited into the neurotrauma special fund.”

SECTION 7. Section 291C-12, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-12 Accidents involving death or serious bodily injury.** (a) The driver of any vehicle involved in an accident resulting in serious bodily injury to or death of any person shall immediately stop the vehicle at the scene of the accident or

as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class B felony.

(c) The license or permit to drive and any nonresident operating privilege of the person so convicted shall be revoked.

(d) For any violation under this section, a surcharge of \$500 shall be imposed, in addition to any other penalties, and shall be deposited into the neuro-trauma special fund.”

SECTION 8. Section 291C-12.5, Hawaii Revised Statutes, is amended to read as follows:

**“[§291C-12.5] Accidents involving substantial bodily injury.** (a) The driver of any vehicle involved in an accident resulting in substantial bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class C felony.

(c) For any violation under this section, a surcharge of \$250 shall be imposed, in addition to any other penalties, and shall be deposited into the neuro-trauma special fund.”

SECTION 9. Section 291C-12.6, Hawaii Revised Statutes, is amended to read as follows:

**“[§291C-12.6] Accidents involving bodily injury.** (a) The driver of any vehicle involved in an accident resulting in bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a misdemeanor.

(c) For any violation under this section, a surcharge of \$100 shall be imposed, in addition to any other penalties, and shall be deposited into the neuro-trauma special fund.”

SECTION 10. Section 291C-102, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-102 Noncompliance with speed limit prohibited.** (a) No person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit established by county ordinance.

(b) The director of transportation with respect to highways under the director’s jurisdiction may place signs establishing maximum speed limits or minimum speed limits. Such signs shall be official signs and no person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit stated on such signs.



(c) If the maximum speed limit is exceeded by more than ten miles per hour, a surcharge of \$10 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.”

SECTION 11. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court; ~~and~~
  - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle<sup>2</sup> during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; ~~and~~
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000[-]; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:<sup>3</sup>
  - (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; ~~and~~
  - (C) A fine of not less than \$500 but not more than \$1,500[-]; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
  - (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years; ~~and~~
  - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively[-]; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;

- (4) For an offense that occurs within ten years of three or more prior convictions for offenses under this section, section 707-702.5, or section 291E-4(a):
  - (A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
  - (B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively; ~~and~~
  - (C) Referral to a substance abuse counselor as provided in subsection (d)[-]; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund.

An offense under this paragraph is a class C felony.
- (5) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted<sup>4</sup> under this paragraph and paragraphs (1), (2), or (3) shall not exceed thirty days.”

SECTION 12. Section 321-28, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)§321-28 Traumatic brain injury advisory board.]]~~ There is established within the department of health the traumatic brain injury advisory board. The advisory board, in consultation with the neurotrauma advisory board, shall advise the department in the development and implementation of a comprehensive plan to address the needs of persons affected by disorders and disabilities that involve the brain. Further, the advisory board, in consultation with the neurotrauma advisory board, shall advise the department of the feasibility of establishing agreements with private sector agencies to develop services for persons with brain injuries.

The advisory board shall consist of at least nine members who shall be appointed by the director of health in accordance with section 26-35. The director of health shall designate a member to be the chairperson of the advisory board. The director of health or a designee shall serve as an ex officio nonvoting member of the advisory board. The members shall serve for a term of four years; provided that upon the initial appointment of the members, two shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and three for a term of four years. In establishing the advisory board, the director of health shall appoint at least:

- (1) Two members representing private sector businesses that provide services for brain injured persons;
- (2) Two survivors of traumatic brain injury; and
- (3) One member representing trauma centers that provide services for brain injured persons.

The members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, that are necessary for the performance of their duties.”

SECTION 13. There is appropriated out of the neurotrauma special fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003 to be expended for the purpose of chapter , Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of health.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2002; provided that sections 5 through 11 shall take effect on January 1, 2003.

(Approved June 7, 2002.)

**Notes**

1. So in original.
2. Prior to amendment "with absolute prohibition from operating a vehicle" appeared here.
3. "By" should be underscored.
4. Prior to amendment "sentenced" appeared here. "Convicted" should be underscored.

**ACT 161**

S.B. NO. 1188

A Bill for an Act Relating to Sentencing for Drugs and Intoxicating Compounds Offenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that drug abuse is a serious problem in the State of Hawaii, and current policies and practices in the criminal justice system have not adequately addressed the issue. Hawaii's criminal justice system requires a major shift in philosophy to deal with the needs of drug offenders by requiring nonviolent drug possession offenders to participate in community-based supervision and treatment, instead of incarceration. This approach has been instituted in a number of states, including Arizona and California, which are discussed in detail below.

Other states are also considering a less punitive approach to dealing with the less serious drug offenders. New Mexico Governor Gary Johnson included in his 2001 State of State address a call to "reform our drug policies. The goal should be to help those addicted to drugs find a better way. The answer is not imprisonment and legal attack." He wants New Mexico to "lead the nation in drug policy reform that will reduce the overall harmful effects of drugs." New York Governor George Pataki, in January 2001, has also stated he wants to "dramatically" reform the state's notoriously harsh Rockefeller drug laws and replace them with a less punitive approach, including expanded treatment.

The relationship between substance abuse and crime is well established. The Department of Justice reports that of thirty-five urban sites included in the Arrestee Drug Abuse Monitoring Program, one thousand nine hundred ninety-eight arrestees tested positive for drug use at an alarming rate, with cocaine use indicated in as many as sixty-seven per cent and marijuana use indicated in as many as fifty-three per cent. The use of methamphetamine among national arrestee populations has increased substantially since 1990, with western states showing the greatest prevalence for methamphetamine.

The legislature finds that a growing body of research demonstrates the destructive impact of alcohol and other substance abuse on personal health and health care costs, the spread of communicable disease, educational performance and attainment, work force participation, safety and productivity in the workplace, and financial stability. These indicators of social erosion are in turn related to crime in many obvious but hard to measure ways. Given the recognized relationship between crime and substance abuse and addiction, it is necessary and appropriate to use, adapt, and expand the resources and remedies available within the criminal justice

system to address the problem of substance abuse dependency and thereby to help reduce the demand for illicit drugs and the incidence of drug-related crimes.

Studies, such as the drug use forecasting studies conducted by the National Institute of Justice, reveal that a large percentage of persons who are arrested for both drug and nondrug offenses (such as thefts, burglaries, robberies, assaults, rapes, and homicides) test positive for recent drug use. Adults who are under the influence of a controlled substance or alcohol commit many offenses to raise revenues to support their habits. Some mind and mood altering drugs induce criminal and often violent behavior, reducing the person's inhibitions as well as the person's ability to anticipate future consequences, thereby undermining the deterrent thrust of the criminal law. Some drugs may also reduce an offender's ability to empathize with a potential victim, resulting in episodes of seemingly mindless violence.

Finally, some crimes, including crimes of violence, are committed in the normal course of conducting illicit drug businesses and enterprises. These include strong-arm robberies and "rip-offs," violent retaliations for these offenses, and efforts to protect markets and "turf" by means of intimidation and terrorism directed against "would be" competitors and drug purchasers who patronize competing drug distributors.

Research has demonstrated that substance abuse and addiction are treatable within the offender population and appropriate actions by criminal justice professionals can foster the effectiveness of treatment. This research further demonstrates that the effectiveness of substance abuse treatment is directly related to the length of stay in treatment. The threat of criminal justice sanctions, in turn, can be used to motivate offenders to enter treatment and stay in treatment for as long as necessary to effect positive change. To achieve this change, treatment must:

- (1) Be of sufficient duration and intensity;
- (2) Be supported by periodic comprehensive drug testing to maintain program integrity;
- (3) Be provided by professional staff who have received adequate training and who continue to receive training and adequate supervision; and
- (4) Provide for the continued collection and analysis of program data to allow for both process and impact evaluation.

Moreover, the drug and alcohol treatment programs must be accredited by the department of health and must be appropriate in type, duration, and intensity based upon the length and level of treatment derived from an alcohol and other drug assessment of each individual's needs, balanced with the public's right to protection.

Most addicted offenders who are convicted of serious crimes and who are sentenced to terms of imprisonment will eventually be released back into the community either on parole or at the expiration of their sentences. Without proper treatment, an offender is at risk to continue to be drug dependent and to commit new offenses, resulting in further injury to victims, loss of property, and the expenditure of limited resources to identify, apprehend, prosecute, and return the offender to confinement.

Under these circumstances, the overriding need to protect the public safety requires that all substance abusing and addicted offenders receive appropriate treatment and monitoring services. The treatment and services should be based on the individual's need as determined by an alcohol and other drug assessment, either in lieu of or during the course of traditional imprisonment, and the individual should continue to receive needed treatment or appropriate after-care, support, or monitoring services as a condition of parole or other release from confinement.

Persons charged with repeat offenses, who actively abuse or are addicted to a controlled substance or alcohol and who are not undergoing appropriate treatment and monitoring, pose a proportionately greater risk of criminal recidivism.

To ensure uniformity and the best possible use of limited resources, the department of health must develop and enforce accreditation and operational standards for all programs, whether public or private, that provide substance abuse assessment services or treatment services to adults who are repeat offenders and inmates in correctional centers and facilities.

For treatment and intervention services to be most effective, alcohol and other drug abusing and addicted offenders must be assured that information provided during the course of treatment and counseling will be kept confidential in accordance with title 42 United States Code section 290dd-2 and title 42 Code of Federal Regulations - part 2, which govern the confidentiality of alcohol and other drug abuse treatment records. Without these protections, an offender in need of alcohol and other drug treatment services may be discouraged from constructively engaging in the treatment process. Preserving the confidentiality of treatment information and records is consistent with the vital goal of holding alcohol and other drug abusing and addicted offenders fully accountable for their past and future actions.

Statistics for Hawaii show that seventy per cent of pretrial offenders annually placed on supervised release under the auspices of the intake service centers have substance abuse problems. During fiscal year 1998-1999, one hundred fifty (twenty-five per cent) of the six hundred offenders had their supervised release status revoked; one hundred twenty (eighty per cent) of the one hundred fifty were drug related revocations. Of the approximately one thousand fifty pretrial and presentence individuals who are incarcerated, the rate of substance abuse is even higher.

Currently, there are about sixteen thousand offenders on probation in Hawaii, including five hundred under the supervision of federal probation authorities. An estimated thirteen thousand six hundred (eighty-five per cent) of the probationers are in need of substance abuse treatment. During fiscal year 1998-1999, five hundred ninety-five state probationers were incarcerated for violating conditions of probation; one hundred fifty (twenty-five per cent) violated their probation only for drug related reasons.

The department of public safety currently has four thousand eight hundred offenders incarcerated in state and mainland correctional facilities. Of those, three thousand six hundred are sentenced to greater than one year. Substance abuse assessments indicate that eighty-five per cent require substance abuse treatment.

The Hawaii paroling authority is responsible for supervising an active parole population of two thousand two hundred sixty-five. During fiscal year 1998-1999, four hundred thirty-three parolees were incarcerated for violating conditions of parole; one hundred seventy-five (forty per cent) of the four hundred thirty-three violated their parole only for drug related reasons.

Arizona (Proposition 200, 1996) and California (Proposition 36, 2000) have passed initiatives providing for mandatory community supervision of nonviolent drug possession offenders, with substance abuse treatment requirements. These measures change state law so that certain drug offenders who use or possess illegal drugs would receive drug treatment and supervision in the community, rather than being sent to prison or jail or supervision in the community without treatment.

Representing a shift in philosophy from a criminal justice model of controlling drug use to a public health model based on harm reduction, the Arizona and California initiatives received substantial support from the voters, garnering approximately two-thirds of the votes. The goal of harm reduction measures is found in California's Proposition 36, "Purpose and Intent" section:

- (1) To divert from incarceration into community-based substance abuse treatment program nonviolent defendants, probationers, and parolees charged with simple drug possession or drug use offenses;

- (2) To halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration of nonviolent drug possession defendants who would be better served by community-based treatment;
- (3) To enhance public safety by reducing drug-related crime and preserving jails and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies.

The measure excludes certain offenders from its provisions, such as those who refuse treatment, have failed drug treatment two or more times, or were convicted in the same criminal proceeding of a non-drug use misdemeanor or felony.

The California legislative analyst provided an overview of Proposition 36 for the voters and included a summary of fiscal effects. The reports states, "This measure is likely to result in net savings to the state after several years of between \$100 and \$150,000,000 annually due primarily to lower costs for prison operations. Assuming the inmate population growth would have otherwise continued, the state would also be able to delay the construction of additional prison beds for a one-time cost avoidance of capital outlay costs of between \$450,000,000 and \$550,000,000 in the long term. Counties would probably experience net savings of about \$4,000,000 annually due primarily to lower jail population."

The defining strength of the Arizona Justice Model is the incorporation of a continuum of "best practice" services as opposed to the reliance on a single program intervention. The designed continuum of care service delivery system comprises substance abuse education programming for the low-risk offender, standard and intensive outpatient programming for the medium- to low-risk offender, and day treatment, short-term and long-term residential treatment for the high risk offender. This service delivery continuum is based on the assessment and matching process that is critical in the effort to maximize positive client outcomes and the effective use of funding, time, and resources.

The purpose of this Act is to require first time non-violent drug offenders, including probation and parole violators, to be sentenced to undergo and complete drug treatment instead of incarceration.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§321- Interagency coordination.** (a) The department of public safety, Hawaii paroling authority, judiciary, department of health, department of human services, and any other agencies assigned oversight responsibilities for offender substance abuse treatment by law or administrative order, shall establish a coordinating body through an interagency cooperative agreement to oversee the development and implementation of offender substance abuse treatment programs in the State to ensure compliance with the intent of the master plan developed under chapter 353G. The coordinating body shall also include a representative from a community based prisoner advocacy group and a substance abuse treatment provider selected by the director of health, and an ex-offender selected by the director of public safety subject to the approval of the chairperson of the Hawaii paroling authority and the chief justice. The coordinating body shall meet not less than quarterly in a meeting subject to chapter 92. The interagency cooperative agreement shall set forth the role of the coordinating body and the responsibilities of each agency that is a party to the agreement.

(b) The department of health shall be the lead agency for interagency coordination of substance abuse treatment. As the lead agency, the department shall act as facilitator of and provide administrative support to the coordinating body.

(c) Notwithstanding any other provision to the contrary, any agency that is part of the interagency cooperative agreement shall provide, upon the request of any other participating agency, all medical, psychological, or mental health records of any offender receiving supervision or treatment while under custody of the State. Any participating agency receiving such records of any offender receiving supervision or treatment while under custody of the State, shall keep that information confidential in accordance with the requirements of 42 United States Code section 290dd-2.”

SECTION 3. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“§706- Sentencing for first-time drug offenders; expungement.** (1) Notwithstanding any penalty or sentencing provision under part IV of chapter 712, a person convicted for the first time for any offense under part IV of chapter 712 involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, or involving possession or use of drug paraphernalia under section 329-43.5, who is non-violent, as determined by the court after reviewing the:

- (a) Criminal history of the defendant;
- (b) Factual circumstances of the offense for which the defendant is being sentenced; and
- (c) Other information deemed relevant by the court;

shall be sentenced in accordance with subsection (2); provided that the person does not have a conviction for any violent felony for five years immediately preceding the date of the commission of the offense for which the defendant is being sentenced.

(2) A person eligible under subsection (1) shall be sentenced to probation to undergo and complete a drug treatment program. If the person fails to complete the drug treatment program and if no other suitable treatment is amenable to the offender, the person shall be returned to court and subject to sentencing under the applicable section under this part. As a condition of probation under this subsection, the court shall require an assessment as to the treatment needs of the defendant, conducted by a person certified by the department of health to conduct the assessments. The drug treatment program for the defendant shall be based upon the assessment. The court may require the person to contribute to the cost of the drug treatment program.

(3) For the purposes of this section, “drug treatment program” means drug or substance abuse services provided outside a correctional facility, but the services do not require the expenditure of state moneys beyond the limits of available appropriations.

(4) The court, upon written application from a person sentenced under this part, shall issue a court order to expunge the record of arrest for that particular conviction; provided that a person shall be eligible for one time only for expungement under this subsection.

(5) Nothing in this section shall be construed to give rise to a cause of action against the State, state employee, or treatment provider.”

SECTION 4. Section 353-66, Hawaii Revised Statutes, is amended to read as follows:

**“§353-66 Terms and conditions of parole; suspension and revocation.** (a) Every parole granted under this part to any prisoner shall be subject to the express condition, to be set forth in the official written notification of parole to the prisoner,

but to be binding upon the prisoner in any event, that all or any portion of the prisoner's credits earned or to be earned may be forfeited by order of the Hawaii paroling authority in the event that the prisoner breaks the prisoner's parole or violates any law of the State or rule of the paroling authority or any of the terms or conditions of the prisoner's parole.

(b) No parole shall be revoked and no credits forfeited without cause, which cause must be stated in the order revoking the parole, or forfeiting the credits after notice to the paroled prisoner of the paroled prisoner's alleged offense and an opportunity to be heard; provided that when a person is convicted in the State of a crime committed while on parole and is sentenced to imprisonment, or when it is shown by personal investigation that a parolee has left the State without permission from the paroling authority and due effort is made to reach the parolee by registered mail directed to the parolee's last known address, no hearing shall be required to revoke the parolee's parole; and provided further that when any duly licensed psychiatrist or licensed psychologist finds that continuance on parole will not be in the best interests of a parolee or the community, the paroling authority, within the limitations of the sentence imposed, shall order the detention and treatment of the prisoner until such time as the prisoner shall be found by any duly licensed psychiatrist or licensed psychologist to be eligible for continuance on parole.

(c) If any paroled prisoner leaves the State without permission from the paroling authority, or if the whereabouts of any paroled prisoner is not known to the paroling authority because of the neglect or failure of the prisoner to so inform it, the paroling authority may order the parole suspended pending apprehension. From and after the suspension of the parole of any paroled prisoner and until the paroled prisoner's return to custody, the paroled prisoner shall be deemed an escapee and a fugitive from justice, and no part of the time during which the paroled prisoner is an escapee and a fugitive from justice shall be part of the paroled prisoner's term.

(d) The paroling authority may at any time order the arrest and temporary return to custody of any paroled prisoner, as provided in section 353-65, for the purpose of ascertaining whether or not there is sufficient cause to warrant the paroled prisoner's reimprisonment or the revoking of the paroled prisoner's parole or other action provided for by this part.

(e) Any paroled prisoner retaken and reimprisoned as provided in this chapter shall be confined according to the paroled prisoner's sentence for that portion of the paroled prisoner's term remaining unserved at time of parole, but successive paroles may, in the discretion of the paroling authority, be granted to the prisoner during the life and in respect of the sentence.

(f) Parole shall not be revoked for a first violation of the terms and conditions of parole involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, or involving possession or use of drug paraphernalia under section 329-43.5; provided that the person shall be required to undergo and complete a drug treatment program as a condition of continued parole. If the person fails to complete the drug treatment program and if no other suitable treatment is amenable to the offender, the person shall be subject to revocation of parole and return to incarceration. The Hawaii paroling authority may require the person to contribute to the cost of the drug treatment program.

As used in this subsection "drug treatment program" means drug or substance abuse services provided outside a correctional facility, but the services do not require the expenditure of state moneys beyond the limits of available appropriations.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, state employee, or treatment provider."



SECTION 5. Section 706-625, Hawaii Revised Statutes, is amended to read as follows:

**“§706-625 Revocation, modification of probation conditions.** (1) The court, on application of a probation officer, the prosecuting attorney, the defendant, or on its own motion, after a hearing, may revoke probation[;] except as provided in subsection 7, reduce or enlarge the conditions of a sentence of probation, pursuant to the provisions applicable to the initial setting of the conditions and the provisions of section 706-627.

(2) The prosecuting attorney, the defendant’s probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The prosecuting attorney, the defendant’s probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court’s consideration. The defendant shall have the right to be represented by counsel. For purposes of this section the court shall not be bound by the Hawaii rules of evidence, except for the rules pertaining to privileges.

(3) The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

(4) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

(5) When the court revokes probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which the defendant was convicted.

(6) As used in this section, “conviction” means that a judgment has been pronounced upon the verdict.

(7) Probation shall not be revoked for a first violation of the terms and conditions of probation involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, or involving possession or use of drug paraphernalia under section 329-43.5; provided that the person shall be required to undergo and complete a drug treatment program as a condition of continued probation. If the person fails to complete the drug treatment program and if no other suitable treatment is amenable to the offender, the person shall be subject to revocation of probation and return to incarceration. The court may require the person to contribute to the cost of the drug treatment program.

As used in this subsection, “drug treatment program” means drug or substance abuse services provided outside a correctional facility, but the services do not require the expenditure of state moneys beyond the limits of available appropriations.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, state employee, or treatment provider.”

SECTION 6. Section 712-1241, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Notwithstanding any law to the contrary, except for first time offenders sentenced under section 706-\_\_\_\_, if the commission of the offense of promoting a dangerous drug in the first degree under this section involved the possession, distribution, or manufacture of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of

imprisonment of twenty years with a mandatory minimum term of imprisonment, the length of which shall be not less than one year and not greater than ten years, at the discretion of the sentencing court for a conviction under subsection (1)(a), (1)(b), or (1)(c) and not less than ten years for a conviction under subsection (1)(d). The person convicted shall not be eligible for parole during the mandatory term of imprisonment.”

SECTION 7. Section 712-1242, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Notwithstanding any law to the contrary, except for first time offenders sentenced under section 706-\_\_\_, if the commission of the offense of promoting a dangerous drug in the second degree under this section involved the possession or distribution of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of imprisonment of ten years with a mandatory minimum term of imprisonment, the length of which shall be not less than six months and not greater than five years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.”

SECTION 8. Section 712-1243, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Notwithstanding any law to the contrary, except for first time offenders sentenced under section 706-\_\_\_, if the commission of the offense of promoting a dangerous drug in the third degree under this section involved the possession or distribution of methamphetamine, the person convicted shall be sentenced to an indeterminate term of imprisonment of five years with a mandatory minimum term of imprisonment, the length of which shall be not less than thirty days and not greater than two-and-a-half years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.”

SECTION 9. The Hawaii paroling authority shall conduct a review of all current incarcerated persons serving a sentence for conviction under section 712-1243, Hawaii Revised Statutes, to determine if they are eligible for the drug treatment program under section 3 of this Act. If the Hawaii paroling authority determines that a person is eligible for the drug treatment program rather than further incarceration, the authority shall grant parole to any person who has served at least thirty days of incarceration, with the mandatory condition of undergoing and completing drug treatment program.

SECTION 10. The department of health shall submit an annual report to the legislature before the convening of each regular session, beginning with the regular session of 2004, on the status and progress of the interagency cooperative agreement required under section 2 of this Act and the effectiveness of the delivery of services thereto, and expenditures made under this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 162

S.B. NO. 2526

A Bill for an Act Relating to Parental Preferences in Government Contracts, Programs, and Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 577-7.5, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~577-7.5 Parental preferences in government contracts, programs, and services.]** (a) The purpose of this section is to help to eliminate any preference in a state or county executive agency or judiciary contract, program, or service that favors one parent over the other in terms of child-rearing; provided that nothing in this section is intended to affect maternity benefits. This section shall not serve as a legal basis to invalidate any state ~~[or]~~, county, or judiciary contract, program, or service.

(b) All state and county executive agencies and the judiciary ~~[with]~~ shall review their respective contracts, programs, and services that affect parental roles in children’s health, welfare, and education ~~[shall review those contracts, programs,] and [services],~~ in the sole discretion of the agency~~[, and]~~ or judiciary, determine whether a preference exists that favors one parent over another in the raising of their children. If a determination in the sole discretion of the agency or the judiciary is made that a preference exists, it shall direct its staff to analyze the preference and determine whether it unfairly precludes a parent from participating in child-rearing. If so, the state or county agency or the judiciary shall seek to eliminate that preference by encouraging modifications to ensure the inclusion of both parents in all contracts, programs, and services designed to assist in the raising of children; provided that this provision shall in no instance be interpreted to reduce or negatively impact maternity leave benefits or require any changes in personnel programs or work force policies.

(c) This section shall not apply to a preference that:

- (1) The state or county agency or the judiciary determines to be in the best interest of the child;
- (2) Would impose an unreasonable burden on the State ~~[or]~~, a county,<sup>1</sup> or the judiciary by removing a preference from existing contracts, programs, or services; or
- (3) Conflicts with existing collective bargaining contracts.

(d) Each state and county executive agency and the judiciary under subsection (b) shall report to the legislature on the implementation of this section no later than twenty days before the beginning of the regular session of 2003, and annually thereafter.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 8, 2002.)

## Note

1. Comma should be underscored.

## ACT 163

S.B. NO. 2666

A Bill for an Act Relating to a Seal of Quality for Fresh and Processed Agricultural Products.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to protect the integrity and value of the marketing cachet for Hawaii branded farm and value-added products. The Hawaii brand, whether it is marketed as a visitor destination, manufactured product, or farm or value-added product, drives Hawaii-based sales at value-added prices. In the case of Hawaii's fresh and value-added agricultural products, the marketplace is filled with goods that bear the label "Hawaii" or "Hawaiian" with no real substantiation of the origin and quality of the product. Unsuspecting visitors and residents perceive that they are purchasing a bona fide Hawaiian agricultural product.

The legislature finds that establishing a seal of quality for fresh and value-added agricultural products that meet high quality standards, are grown, manufactured, assembled, or fabricated in Hawaii, and have a substantial amount of their wholesale value added by manufacture, assembly, fabrication, or production within the State, provides consumers with assurance in their product selection. Such a program complements section 486-119, Hawaii Revised Statutes, which requires that at least fifty-one per cent of the wholesale value of a product be added by manufacture, assembly, fabrication, or production within the State in order to use the term "made in Hawaii".

SECTION 2. Chapter 148, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . SEAL OF QUALITY**

**§148- Establishment of a seal of quality program.** There is established within the department of agriculture a seal of quality program, which may include a certificate of origin. This program shall establish official seals of quality for fresh and processed agricultural products that are produced within the State. The seals of quality may be in the form of seals, brands, labels, or trademarks.

**§148- Authorization to contract with nonprofit corporations; duties.** (a) The department of agriculture may enter into contracts with nonprofit corporations to engage in the activities in subsections (b), (c), and (d). These nonprofit corporations shall:

- (1) Maintain status as a nonprofit corporation pursuant to section 501(c) of the Internal Revenue Code of 1986, as amended; and
- (2) Consist of a board of directors comprised of representatives from a cross-section of agricultural organizations, commodity groups, and governmental agencies.

(b) The nonprofit corporations contracted under subsection (a) may develop and recommend to the department of agriculture for adoption, rules relating to:

- (1) The design of a seal of quality for agricultural products that are grown, processed, or manufactured in Hawaii;

- (2) The standards and criteria for agricultural products grown, processed, or manufactured in Hawaii that must be satisfied to obtain use of the seal of quality; and
- (3) The license fees required for use of the seal of quality.
- (c) The nonprofit corporations contracted under subsection (a) shall:
  - (1) Develop and implement marketing programs for products licensed to use the seal of quality;
  - (2) Issue licenses for the use of the seal of quality and collect the license fees established by rules of the department of agriculture; and
  - (3) Develop promotional materials and establish and collect fees for the use of these promotional materials.
- (d) The nonprofit corporations contracted under subsection (a) may:
  - (1) Assist the department of agriculture in monitoring compliance with the requirements for the use of the seal of quality; and
  - (2) Accept gifts or grants in any form from any public agency or any other source.

**§148- Rules.** Subject to chapter 91, the department of agriculture shall adopt rules, as necessary, with respect to:

- (1) Definition of terms;
- (2) The design of the seals of quality for identifying fresh or processed agricultural commodities that are produced within the State;
- (3) The categories of fresh or processed agricultural commodities that are eligible to use the seals of quality;
- (4) The minimum quality of fresh or processed agricultural commodities that are eligible to use the seals of quality;
- (5) The minimum per cent of wholesale value added within the State to qualify for use of the seals of quality;
- (6) Minimum packaging and labeling requirements for fresh or processed agricultural commodities using a seal of quality;
- (7) Application forms for the license to use the seals of quality and the information required to be included on the application forms;
- (8) Assessment and collection of license fees for the use of the seals of quality to cover the costs of providing the service;
- (9) Assessment and collection of charges for stickers, placards, and other promotional materials provided by the department of agriculture;
- (10) Provisions for the appropriate use of seals of quality, including use in advertisements;
- (11) Record keeping requirements for parties licensed to use the seals of quality;
- (12) Administrative penalties for violation of this part; and
- (13) Enforcement of this part.

**§148- Enforcement.** (a) The department of agriculture, through its authorized agents and employees, shall enforce this part.

(b) The department of agriculture or its authorized agent may examine, during normal business hours, any ledgers, books, accounts, memoranda, and other documents, fresh or processed agricultural products, supplies, and equipment, and any other articles and things used in connection with the business of a person licensed under this part.

**§148- Prohibited acts.** No person shall:

- (1) Use a seal of quality established under this part without being licensed;

- (2) Use a seal of quality on a fresh or processed agricultural commodity that does not meet the requirements of this part;
- (3) Use a device, symbol, indicia, or by any other means imitate the seal of quality established by this part; or
- (4) Make any claim that a fresh or processed agricultural commodity is permitted to use a seal of quality when it is not.

**§148- Administrative penalties.** (a) The department of agriculture, after notice and opportunity for hearing, may revoke or suspend any license issued under this part for any violation of this part.

(b) The department of agriculture, after notice and opportunity for hearing, may fine any person who violates this part, not more than \$1,000 for each separate offense. Each day or instance of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.”

SECTION 3. This Act shall take effect upon its approval.

(Approved June 13, 2002.)

## ACT 164

H.B. NO. 223

A Bill for an Act Relating to Optometry.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Since the current optometry law was implemented in August 1999, a joint formulary advisory committee, established by the department of commerce and consumer affairs, has been responsible for determining which medications could be used by therapeutically certified optometrists, as limited by chapter 459, Hawaii Revised Statutes. The joint formulary advisory committee, composed of two optometrists, two ophthalmologists, and two pharmacists, has not demonstrated a comprehensive knowledge of the current education, training, and national credentialing standards of optometrists in the diagnosis, treatment, and management of eye disease. During the past three years, the joint formulary advisory committee has not worked effectively, and its meetings have resulted in limited prescriptive authority for optometrists, placing greater restrictions on optometrists beyond the limitations set in chapter 459, Hawaii Revised Statutes.

The purpose of this Act is to repeal the joint formulary advisory committee and transfer the responsibility for formulary selection to the board of examiners in optometry, a board appointed by the governor to ensure public safety by regulating the practice of optometry. This Act further allows therapeutically certified optometrists to prescribe, under certain restrictions, topical steroidal and anti-viral agents, and prohibits the use of anti-fungal, injectable, and oral agents by optometrists.

SECTION 2. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§459- Restrictions on the use of topical steroidal agents and topical anti-viral agents.** (a) A therapeutically certified optometrist may prescribe topical steroidal agents with the following restrictions:

- (1) An ophthalmologist shall be consulted:

- (A) If the patient's condition worsens or does not improve seventy-two hours after initiating treatment with a topical steroid; or
  - (B) If the inflammation is still present two weeks after diagnosis; and
  - (C) When treating a corneal ulcer or peripheral inflammatory keratitis with a topical steroid; provided that children under the age of fifteen may be treated with a topical steroid only after consultation with an ophthalmologist;
  - (2) The patient shall be referred to an ophthalmologist if a topical steroid is still indicated three weeks after diagnosis; and
  - (3) The only type of anterior uveitis to be treated under this section is traumatic iritis.
- (b) A therapeutically certified optometrist may prescribe topical anti-viral agents for corneal epithelial lesions; provided that if the patient's condition does not improve seventy-two hours after initiating treatment with a topical anti-viral agent, the patient shall be immediately referred to an ophthalmologist."

SECTION 3. Section 459-1, Hawaii Revised Statutes, is amended to read as follows:

**"§459-1 Optometry; practice of, defined.** (a) The practice of optometry, for the purpose of this chapter, is defined to be:

- (1) The examination, diagnosis, treatment, and management of diseases and disorders of the human visual system, the eye, and the eyelids;
- (2) The employment of trial frame or trial lenses, and any objective or subjective means or methods, other than the use of surgery, including refractive or therapeutic laser surgery, but including the use and prescription of topically applied pharmaceutical agents, as established by the board, and the performance of non-invasive diagnostic procedures or ordering of laboratory tests related to the use of topically applied pharmaceutical agents for the purpose of examining, diagnosing, treating, and managing visual, muscular, or other diseases and disorders of the human visual system, the eye, and the eyelids; or
- (3) The prescribing, fitting, or adaptation of any ophthalmic lenses, contact lenses, prisms, frames, mountings, or orthoptic exercises for the correction or relief of the visual or muscular anomalies of the human eye.

Superficial foreign bodies may be removed from the human eye and eyelids, including the removal of corneal superficial foreign bodies above Bowman's Layer.

(b) Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or claims to be able to do so, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked and unsuspended license as provided in this chapter; provided that an orthoptist may give visual training, including exercises, under the supervision of a physician or optometrist. The use and prescription of topically applied pharmaceutical agents and the removal of superficial foreign bodies from the human eye and eyelid shall be granted to an optometrist licensed under this chapter who has met the requirements under ~~[section]~~ sections 459-7[-] and 459-7.4.

(c) If while examining or treating a patient a licensed optometrist finds, by history or examination, any ocular abnormality or any evidence of systemic disease requiring further diagnosis and possible treatment beyond the scope of practice as defined in this section, the optometrist shall refer that patient to an appropriate licensed physician."

SECTION 4. Section 459-7.4, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§459-7.4~~]]~~ Therapeutically certified optometrists; scope; qualifications ~~[; advisory committee]~~.** (a) The use and prescription of topical therapeutic pharmaceutical agents as established by the ~~[joint formulary advisory committee and adopted by the]~~ board for the treatment and management of conditions of the anterior segment of the human eye, eyelids, and lacrimal system and the non-invasive surface removal of superficial foreign bodies from the anterior segment of the human eye and eyelids is authorized only for an optometrist licensed under this chapter who meets the requirements of a therapeutically certified optometrist as authorized in this section. The therapeutically certified optometrist shall not prescribe, dispense, or administer oral pharmaceutical agents except those available without prescription. Treatment of glaucoma, use of prescription anti-fungal, injectable, or oral agents, and performing any invasive surgery shall not be allowed. Therapeutic pharmaceutical agents shall not include any of the controlled substances enumerated in sections 329-14, 329-16, 329-18, 329-20, and 329-22.

(b) The board shall grant recognition as a therapeutically certified optometrist; provided the optometrist has:

- (1) A current, unencumbered license as an optometrist in this State;
- (2) Completed a one hundred hour board-approved course in the treatment and management of ocular diseases;
- (3) Passed the National Board of Examiners in Optometry Treatment and Management of Ocular Disease examination;
- (4) Completed one hundred hours of preceptorship under the supervision of an ophthalmologist. The supervising ophthalmologist shall certify completion of the one hundred hours of hands-on experience and the competency of the optometrist to prescribe, dispense, and administer therapeutic pharmaceutical agents on a form and format prescribed by the board; provided that the preceptorship shall include training in diagnosis, treatment, and management of ocular disease; and
- (5) The therapeutically certified optometrist shall renew the certification with the biennial renewal of license and submit proof of satisfying thirty-six hours of continuing education in the diagnosis, treatment, and management of ocular and systemic diseases. Completion of the thirty-six hours in the diagnosis, treatment, and management of ocular and systemic diseases shall fulfill the continuing education requirements pursuant to section 459-7 and this section.

~~[(c) The department of commerce and consumer affairs shall establish a joint formulary advisory committee composed of:~~

- ~~(1) Two persons licensed as optometrists;~~
- ~~(2) Two persons licensed as pharmacists; and~~
- ~~(3) Two persons licensed in medicine by the board of medical examiners and board certified in ophthalmology.~~

~~The joint formulary advisory committee shall recommend the applicable formulary for persons certified under this section. The board of optometry shall adopt the formulary as established by the joint formulary advisory committee in its rules.]”~~

SECTION 5. Section 461-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful:

- (1) For any person to sell or offer for sale at public auction, or to sell or offer for sale at private sale in a place where public auctions are



- conducted, any prescription drugs without first obtaining a permit from the board of pharmacy to do so;
- (2) For any person to distribute or dispense samples of any prescription drugs without first obtaining a permit from the board to do so; provided that nothing in this paragraph shall interfere with the furnishing of samples or drugs directly to physicians, druggists, dentists, veterinarians, and optometrists for use in their professional practice;
  - (3) For wholesalers to sell, distribute, or dispense any prescription drug, except to a pharmacist, physician, dentist, veterinarian, or optometrist who is allowed to use pharmaceutical agents under chapter 459 or to a generally recognized industrial, agricultural, manufacturing, or scientific user of drugs for professional or business purposes; provided that it shall be unlawful for wholesalers to sell, distribute, or dispense any prescription pharmaceutical agent that is not ~~[listed under section 459-7.4(c) to any optometrist;]~~ approved by the board of examiners in optometry;
  - (4) For any wholesale prescription drug distributor to sell or distribute medical oxygen except to a:
    - (A) Licensed practitioner with prescriptive authority;
    - (B) Pharmacist;
    - (C) Medical oxygen distributor;
    - (D) Patient or a patient's agent pursuant to a prescription; or
    - (E) Emergency medical services for administration by trained personnel for oxygen deficiency and resuscitation;
  - (5) For any medical oxygen distributor to supply medical oxygen pursuant to a prescription order, to a patient or a patient's agent, without first obtaining a permit from the board to do so;
  - (6) For any person, as principal or agent, to conduct or engage in the business of preparing, manufacturing, compounding, packing, or repacking any drug without first obtaining a permit from the board to do so; and
  - (7) For any out-of-state pharmacy or entity engaging in the practice of pharmacy, in any manner to distribute, ship, mail, or deliver prescription drugs or devices into the State without first obtaining a permit from the board; provided that the applicant shall:
    - (A) Provide the location, names, and titles of all principal corporate officers;
    - (B) Attest that the applicant or any personnel of the applicant has not been found in violation of any state or federal drug laws, including the illegal use of drugs or improper distribution of drugs;
    - (C) Submit verification of a valid unexpired license, permit, or registration in good standing to conduct the pharmacy in compliance with the laws of the home state and agree to maintain in good standing the license, permit, or registration; and
    - (D) Have in its employ a registered pharmacist whose registration is current and in good standing."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 2002.

(Approved June 18, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 165

H.B. NO. 703

A Bill for an Act Relating to Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage form);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Glutethimide;
- (11) Isomethadone;
- (12) Levo-alphaacetylmethadol (LAAM);
- (13) Levomethorphan;
- (14) Levorphanol;
- (15) Metazocine;
- (16) Methadone;
- (17) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (18) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- ~~[(19) Oxycodone]~~
- ~~[(20)]~~ (19) Pethidine (Meperidine);
- ~~[(21)]~~ (20) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- ~~[(22)]~~ (21) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- ~~[(23)]~~ (22) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- ~~[(24)]~~ (23) Phenazocine;
- ~~[(25)]~~ (24) Piminodine;
- ~~[(26)]~~ (25) Racemethorphan;
- ~~[(27)]~~ (26) Racemorphan;
- ~~[(28)]~~ (27) Remifentanil; and
- ~~[(29)]~~ (28) Sufentanil.”

SECTION 2. Section 329-20, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers,

and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine)<sup>1</sup>
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Phentermine;
- (9) Pemoline (including organometallic complexes and chelates thereof);
- (10) Pipradrol;
- (11) Sibutramine; and
- (12) [SPA ((-)-1-dimethylamino-1,2-diphenylethane.) SPA (1-dimethylamino-1,2-diphenylethane, lefetamine).]

SECTION 3. Section 329-38, Hawaii Revised Statutes, is amended to read as follows:

**“§329-38 Prescriptions.** (a) No controlled substance in schedule II may be dispensed without a written prescription of a practitioner, except:

- ~~[(4) In an emergency situation, these drugs may be dispensed upon oral prescription of a practitioner; provided that promptly thereafter, the prescription is reduced to writing by the practitioner and filed by the pharmacy; or]~~
- (1) In the case of an emergency situation, a pharmacist may dispense a controlled substance listed in schedule II upon receiving oral authorization from a prescribing practitioner; provided that:
  - (A) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription signed by the prescribing practitioner);
  - (B) Within seventy-two hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of this subsection, the prescription shall have written on its face “Authorization for Emergency Dispensing.” The written prescription may be delivered to the pharmacist in person or by mail, and if by mail, the prescription must be postmarked within the seventy-two hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription, which had earlier been reduced to writing. The pharmacist shall notify the administrator if the prescribing practitioner fails to deliver a written prescription to the pharmacy within the allotted time. Failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing individual practitioner. Any physician who fails to deliver a written prescription within the seventy-two hour period shall be in violation of section 329-41(a)(1); or
- (2) When dispensed directly by a practitioner, other than a pharmacist, to the ultimate user. The practitioner in dispensing a controlled substance in schedule II shall affix to the package a label showing:

- (A) The date of dispensing;
- (B) The name, strength, and quantity issued of the drug;
- (C) The dispensing practitioner's name and address;
- (D) The name of the patient;
- (E) The date the potency of the drug expires if that date is available from the manufacturer or principal labeler; and
- (F) Directions for use, and cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule II controlled substances ordered, administered, prescribed, and dispensed shall be maintained for five years. ~~[All schedule II prescriptions shall be written by the practitioner in duplicate.]~~ Prescriptions and records of dispensing shall otherwise be retained in conformance with the requirements of section 329-36. No prescription for a controlled substance in schedule II may be refilled.

(b) The transfer of original prescription information for a controlled substance listed in schedule III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis, subject to the following requirements:

- (1) The transfer shall be communicated directly between two licensed pharmacists, and the transferring pharmacist shall:
  - (A) Write or otherwise place the word "VOID" on the face of the invalidated prescription;
  - (B) Record on the reverse of the invalidated prescription the name, address, and DEA registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and
  - (C) Record the date of the transfer and the name of the pharmacist transferring the information;
- (2) The pharmacist receiving the transferred prescription information shall:
  - (A) Write or otherwise place the word "transfer" on the face of the transferred prescription;
  - (B) Record all information required to be on a prescription, including:
    - (i) The date of issuance of original prescription;
    - (ii) The original number of refills authorized on original prescription;
    - (iii) The date of original dispensing;
    - (iv) The number of valid refills remaining and date of last refill;
    - (v) The pharmacy's name, address, DEA registration number, and original prescription number from which the prescription information was transferred; and
    - (vi) The name of transferor pharmacist;
- (3) Both the original and transferred prescription must be maintained for a period of five years from the date of last refill; and
- (4) The procedure allowing the transfer of prescription information for refill purposes is permissible only between pharmacies located on the same island in this State.

Failure to comply with this subsection shall void the authority of the pharmacy to transfer prescriptions or receive a transferred prescription to or from another pharmacy.

(c) No controlled substance in schedule III, IV, or V may be dispensed without a written or oral prescription of a practitioner, except when a controlled substance is dispensed directly by a practitioner, other than a pharmacist, to an

ultimate user. The practitioner, in dispensing a controlled substance in schedule III, IV, or V, shall affix to the package a label showing:

- (1) The date of dispensing;
- (2) The name, strength, and quantity issued of the drug;
- (3) The dispensing practitioner's name and business address;
- (4) The name of the patient;
- (5) The date the potency of the drug expires, if that date is available from the manufacturer or the principal labeler;
- (6) Directions for use; and
- (7) Cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule III, IV, and V controlled substances administered, prescribed, and dispensed shall be maintained for five years. Prescriptions and records of dispensing shall be retained in conformance with the requirements of section 329-36 unless otherwise provided by law. Prescriptions may not be filled or refilled more than three months after the date of the prescription or be refilled more than two times after the date of the prescription, unless the prescription is renewed by the practitioner.

(d) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

- (1) A prescription for a controlled substance shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall be upon the prescribing practitioner, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or for legitimate and authorized research shall not be deemed a prescription within the meaning and intent of this section, and the person who knowingly fills such a purported prescription, as well as the person who issues the prescription, shall be subject to the penalties provided for violations of this chapter;
- (2) A prescription may not be issued to allow an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients;
- (3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule for the purpose of "detoxification treatment" or "maintenance treatment". Nothing in this section shall prohibit a physician or authorized hospital staff from administering or dispensing narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction; and
- (4) An individual practitioner may not prescribe or dispense a substance included in schedule II, III, IV, or V for that individual practitioner's personal use, except in a medical emergency.

(e) Prescriptions for controlled substances shall be issued only as follows:

- (1) All prescriptions for controlled substances shall be dated as of, and signed on, the day when the prescriptions were issued and shall bear:
  - (A) The full name and address of the patient; and
  - (B) The name, address, telephone number, and registration number of the practitioner.

The controlled substance prescriptions shall be no larger than four and one-half inches by six and one-half inches and no smaller than four inches by five inches.

A practitioner may sign a prescription in the same manner as the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity, such as five (5)), to indicate the amount of controlled substance to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or by typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of the practitioner, but the prescribing practitioner shall be responsible in case the prescription does not conform in all essential respects to this chapter and any rules adopted pursuant to this chapter. A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section;

- (2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans Affairs facility or other facility serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by the physician:
  - (A) The registration number of the hospital or other institution; and
  - (B) The special internal code number assigned to the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.

The hospital or other institution shall forward a copy of this special internal code number list to the department as often as necessary to update the department with any additions or deletions. Failure to comply with this paragraph shall result in the suspension of that facility's privilege to fill controlled substance prescriptions at pharmacies outside of the hospital or other institution. Each written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician;

- (3) An official exempted from registration shall include on all prescriptions issued by the official:
  - (A) The official's branch of service or agency (e.g., "U.S. Army" or "Public Health Service"); and
  - (B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The service identification number for a Public Health Service employee shall be the employee's social security identification number.

Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer; and

- (4) A physician assistant registered to prescribe controlled substances under the authorization of a supervising physician shall include on all prescriptions issued:
  - (A) The DEA registration number of the supervising physician; and
  - (B) The ~~[special code number assigned to the physician assistant by the department.]~~ DEA registration number of the physician assistant.

Each written prescription issued shall include the printed, stamped, typed, or hand-printed name, address, and phone number of both the supervising physician and physician assistant, and shall be signed by the physician assistant. The medical record of each written prescription issued by a physician assistant shall be reviewed and initialed by the physician assistant's supervising physician within seven working days.

(f) A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of the pharmacist's professional practice and either registered individually or employed in a registered pharmacy or registered institutional practitioner.

(g) Partial filling of controlled substance prescriptions shall be determined as follows:

- (1) The partial filling of a prescription for a controlled substance listed in schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription). The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling; provided that if the remaining portion is not or cannot be filled within the seventy-two-hour period, the pharmacist shall notify the prescribing individual practitioner. No further quantity shall be supplied beyond seventy-two hours without a new prescription; ~~and~~
- (2) The partial filling of a prescription for a controlled substance listed in schedule III, IV, or V is permissible; provided that:
  - (A) Each partial filling is recorded in the same manner as a refilling;
  - (B) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;
  - (C) No dispensing occurs more than three months after the date on which the prescription was issued; and
  - (D) The prescription is refilled no more than two times after the initial date of the prescription, unless the prescription is renewed by the practitioner[-]; and

- (3) A prescription for a schedule II controlled substance written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record on the prescription whether the patient is a "long-term care facility patient." For the purposes of this section, "LTCF" means long-term care facility. A prescription that is partially filled and does not contain the notation "LTCF patient" shall be deemed to have been filled in violation of this section. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II controlled substance prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed sixty days from the issue date unless sooner terminated by the discontinuance of medication.

(h) A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment; provided that the original written, signed prescription is presented to the pharmacist

for review prior to the actual dispensing of the controlled substance, except as noted in subsection (i), (j), or (k). The original prescription shall be maintained in accordance with section 329-36.

(i) A prescription prepared in accordance with subsection (e) written for a narcotic listed in schedule II to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion, but does not extend to the dispensing of oral dosage units of controlled substances, may be transmitted by the practitioner or the practitioner's agent to the pharmacy by facsimile. The pharmacist shall note on the face of the facsimile prescription in red ink "Home Infusion/IV" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

(j) A prescription prepared in accordance with subsection (e) written for a schedule II, III, IV, or V substance for a patient enrolled in a hospice care program certified or paid for by medicare under Title XVIII or a hospice program that is licensed by the State may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or practitioner's agent shall note on the prescription that the patient is a hospice patient. The pharmacist shall note on the face of the facsimile prescription in red ink "HOSPICE" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

(k) A prescription prepared in accordance with subsection (e) written for a schedule II, III, IV, or V controlled substance for a resident of a state-licensed long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The pharmacist shall note on the face of the facsimile prescription in red ink "LTCF" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36."

SECTION 4. Section 329-40, Hawaii Revised Statutes, is amended to read as follows:

**"§329-40 Methadone treatment programs.** (a) Notwithstanding any other provision of law to the contrary, methadone may be administered or dispensed or both as part of a State-registered and Federal [~~Food and Drug Administration~~] Substance Abuse and Mental Health Services Administration approved methadone treatment program by a practitioner who is licensed and registered under state and federal law to administer[~~, prescribe,~~] and dispense methadone for patients or by an agent of the practitioner, supervised by and under the order of the practitioner. The agent must be a pharmacist, registered nurse, or licensed practical nurse. The licensed practitioner shall be responsible for the amounts of methadone administered or dispensed in accordance with [~~Federal Food and Drug Administration~~] Substance Abuse and Mental Health Services Administration regulations and shall record, approve, and countersign all changes in dosage schedules.

(b) Registration of a methadone treatment program requires that:

- (1) The methadone treatment program obtain a controlled substance registration from the State of Hawaii and the Drug Enforcement Administration;
- (2) The medical director of a methadone treatment program obtain a controlled substance registration from the State of Hawaii and the Drug Enforcement Administration at the location of the program;
- (3) Admission to a methadone treatment program be limited to the narcotic-dependent persons as defined in this chapter;



- (4) Unless otherwise stated in this chapter, admission to a methadone treatment program be in accordance with title 21 Code of Federal Regulations part 291[;] and title 42 Code of Federal Regulations part 8;
- (5) All medical orders including initial medication orders, all subsequent medication order changes, all changes in the frequency of take-home medication, and the prescription of additional take-home medication for emergency situations be authorized by a licensed registered physician employed by the program;
- (6) Only the medical director or other designated program physician authorize a patient's admission for treatment in accordance with title 21 Code of Federal Regulations part 291[;] and title 42 Code of Federal Regulations part 8; and
- (7) Take-home doses of methadone be dispensed to patients in accordance with title 21 Code of Federal Regulations part 291[;] and title 42 Code of Federal Regulations part 8, but shall not exceed a fourteen-day supply at any given time nor more than the maximum amount of take-homes for Levo-alphaacetylmethadol (LAAM/Orlamm) that would allow a patient to be away from the clinic for dosing for more than two weeks unless authorized by the state authority.

The term "methadone treatment program" as used in this section means an organization or a person (including a private physician) that administers or dispenses methadone to a narcotic-dependent person for maintenance or detoxification treatment and who provides the medical and rehabilitative services required by title 21 Code of Federal Regulations part 291 or title 42 Code of Federal Regulations part 8 and is approved to do so by the State and by the United States [~~Food and Drug Administration;~~ Substance Abuse and Mental Health Services Administration, and who holds a controlled substance registration as required by this chapter and the United States Drug Enforcement Administration to use methadone for the treatment of narcotic-dependent persons.

The term "narcotic-dependent person" as used in this section means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.

The term "state authority" as used in this section means the agency within the State which exercises the responsibility for governing the treatment of narcotic-dependent persons with the narcotic drug methadone."

SECTION 5. Section 329-59, Hawaii Revised Statutes, is amended to read as follows:

**"§329-59 Controlled substance registration revolving fund; established.**

(a) There is established within the state treasury the controlled substance registration revolving fund. The fund shall be expended at the discretion of the director of public safety for the purpose of:

- (1) Offsetting the cost of the electronic prescription accountability system [~~and~~], the registration and control of the manufacture, distribution, prescription, and dispensation of controlled substances and regulated chemicals listed under section 329-61, within the State[;] and the processing and issuance of a patient registry identification certificate designated under part IX; and
- (2) Funding positions authorized by the legislature by law.

(b) The fund shall consist of all moneys derived from fees collected pursuant to sections 329-31 [~~and~~], 329-67, and 329-123(b) and legislative appropriations. All fees collected pursuant to sections 329-31 [~~and~~], 329-67, and 329-123(b) shall be deposited in the controlled substance registration revolving fund."

SECTION 6. There is appropriated out of the controlled substance registration revolving fund established by section 329-59, Hawaii Revised Statutes, the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2002-2003, to be expended by the department of public safety to provide for equipment and current expenses to carry out the provisions of part IX of chapter 329, Hawaii Revised Statutes.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval, except that section 6 shall take effect on July 1, 2002.

(Approved June 18, 2002.)

**Note**

1. Prior to amendment “;” appeared here.

**ACT 166**

H.B. NO. 1749

A Bill for an Act Relating to Adult Residential Care Homes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. On September 30, 2000, the operator of an adult residential care home (ARCH) in the State was allegedly murdered by one of her residents who, unbeknownst to the victim, had previously been acquitted of murder and attempted murder by reason of insanity in 1984. As a result of that acquittal, the current suspect was committed to the state hospital but was later placed on conditional release in 1988. The suspect’s conditional release was revoked and reinstated several times and the suspect was on conditional release at the time of the killing.

The legislature finds that the disclosure of a prospective adult residential care home resident’s criminal history under certain circumstances is warranted and in the interest of the people of the State. The legislature further finds that certain ARCH residents with physical and mental impairments may live many years with the same level of care and same caregivers. The legislature believes that even if the level of care required for the patient changes, if the ARCH operator, the resident, and interested parties agree that the resident should remain at the ARCH, current department of health practices and laws should allow the resident to remain is to require the department of health to disclose to the operator of an adult residential care home the criminal history of a prospective resident under certain circumstances, and to allow “aging in place” for certain ARCH residents, by providing the department of health with the discretion to allow these residents to continue to live in adult residential care homes even though their level of care has exceeded ARCH placement criteria.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§321- Criminal history disclosure.** Notwithstanding any other law to the contrary, the department of health shall disclose to the operator of an adult residential care home, to the extent that the division or office of the department that is referring the individual to the care home possesses, the information in existing records at the time of, and as part of, the application for admission, the criminal

history of a prospective resident applying for entry to the care home when the prospective resident had previously been:

- (1) Convicted of an offense involving violence to a person; or
- (2) Admitted to the state hospital under the jurisdiction of the department of health as a result of an acquittal under chapter 704 for an offense involving violence to a person.”

SECTION 3. Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The department shall develop and adopt a social model of health care to ensure the health, safety, and welfare of individuals placed in adult residential care homes. The social model of care shall provide for aging in place and be designed to protect the health, safety, civil rights, and rights of choice of the persons to reside in a nursing facility or in home- or community-based care.”

SECTION 4. Section 321-15.62, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director shall adopt rules regarding expanded adult residential care homes in accordance with chapter 91 which shall ~~[be]~~ implement a social model of health care designed to:

- (1) Protect the health, safety, civil rights, and rights of choice of the persons to reside in a nursing facility or in home- or community-based care;
- (2) Provide for the licensing of expanded adult residential care homes for persons who are certified by the department of human services, a physician, advanced practice registered nurse, or registered nurse case manager as requiring skilled nursing facility level or intermediate care facility level of care who have no financial relationship with the home care operator or facility staff; provided that the rules shall allow group living in two categories of expanded adult residential care homes as licensed by the department of health:
  - (A) Type I home shall consist of five or less residents with no more than two nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department; and
  - (B) Type II home shall consist of six or more residents, with no more than twenty per cent of the home’s licensed capacity as nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department[-]; provided further that the department shall exercise its discretion for a resident presently residing in a Type I or Type II home, to allow the resident to remain as an additional nursing facility level resident based upon the best interests of the resident. The best interests of the resident shall be determined by the department after consultation with the resident, the resident’s family, primary physician, case manager, primary caregiver, and home operator;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 18, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 167**

H.B. NO. 2056

A Bill for an Act Relating to Social Work.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the practice of social work is a professional practice affecting the public health, safety, and welfare of the people of Hawaii and it is in the best interest of the public that this profession be regulated. Furthermore, the legislature finds that it is in the public's best interest that only qualified persons be permitted to engage in the practice of social work. The purpose of this Act is to promote, preserve, and protect the public health, safety, and welfare of the people of Hawaii by regulating the practice of social work and the licensure of social workers.

SECTION 2. Chapter 467E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§467E- Limitations of scope of practice.** In accordance with the definition of the practice of social work, there shall be limitations on the scope of the practice of social work as follows:

- (1) The “licensed bachelor social worker” or “L.B.S.W.” may perform duties as defined in paragraphs (1) to (4) of the definition of the practice of social work in section 467E-1 in an agency setting under supervision;
- (2) The “licensed social worker” or “L.S.W.” may perform duties as defined in paragraphs (1) to (7) of the definition of the practice of social work in section 467E-1; and
- (3) The “licensed clinical social worker” or “L.C.S.W.” may perform duties as defined in paragraphs (1) to (8) of the definition of the practice of social work in section 467E-1.”

SECTION 3. Section 431M-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “alcohol or drug dependence outpatient services” to read:

““Alcohol or drug dependence outpatient services” means alcohol or drug dependence nonresidential treatment provided on an ambulatory basis to patients with alcohol or drug dependence problems that includes interventions prescribed and performed by qualified physicians, psychologists, licensed clinical social workers, or advanced practice registered nurses. This definition shall not imply a broadening of the scope of or granting of prescriptive authority privileges, except as otherwise allowed pursuant to chapter 457.”

2. By amending the definition of “clinical social worker” to read:

““[Clinical] Licensed clinical social worker” means a person who is a licensed [in the practice of] clinical social [work] worker pursuant to chapter 467E [and certified in clinical social work by a recognized national organization].”

3. By amending the definition of “day treatment services” to read:

““Day treatment services” means treatment services provided by a hospital, mental health outpatient facility, or nonhospital facility to patients who, because of their conditions, require more than periodic hourly service. Day treatment services shall be prescribed by a physician, psychologist, licensed clinical social worker, or advanced practice registered nurse [~~with a psychiatric or mental health specialty or subspecialty~~], and carried out under the supervision of a physician, psychologist, licensed clinical social worker, or advanced practice registered nurse [~~with a psychiatric or mental health specialty or subspecialty~~]. Day treatment services require less than twenty-four hours of care and a minimum of three hours in any one day.”

4. By amending the definition of “mental health outpatient services” to read:

““Mental health outpatient services” means mental health nonresidential treatment provided on an ambulatory basis to patients with mental illness that includes interventions prescribed and performed by a physician, psychologist, licensed clinical social worker, or advanced practice registered nurse [~~with a psychiatric or mental health specialty or subspecialty~~].”

5. By amending the definition of “partial hospitalization services” to read:

““Partial hospitalization services” means treatment services, including in-hospital treatment services or benefits, provided by a hospital or mental health outpatient facility to patients who, because of their conditions, require more than periodic hourly service. Partial hospitalization services shall be prescribed by a physician or psychologist, and may be prescribed by a licensed clinical social worker in consultation with a physician or psychologist or an advanced practice registered nurse [~~with a psychiatric or mental health specialty or subspecialty~~] in consultation with a physician or psychologist. Partial hospitalization services require less than twenty-four hours of care and a minimum of three hours in any one day.”

6. By amending the definition of “qualified” to read:

““Qualified” means:

- (1) Having skill in the diagnosis or treatment of substance use disorders, based on a practitioner’s credentials, including but not limited to professional education, clinical training, licensure, board or other certification, clinical experience, letters of reference, other professional qualifications, and disciplinary action; or
- (2) Being a licensed physician, psychologist, [or] licensed clinical social worker, or advanced practice registered nurse, and [be] certified pursuant to chapter 321.”

7. By amending the definition of “treatment episode” to read:

““Treatment episode” means one admission to an accredited hospital or nonhospital facility, or office of a qualified physician, psychologist, licensed clinical social worker, or advanced practice registered nurse for treatment of alcohol or drug dependence, or both, as stipulated in a prescribed treatment plan and [which] that would generally produce remission in those who complete the treatment. The prescribed treatment plan may include the provision of substance abuse services in more than one location and may include in-hospital, nonhospital residential, day treatment, or alcohol or drug dependence outpatient services, or any combination thereof. An admission for only detoxification services shall not constitute a treatment episode.”

SECTION 4. Section 431M-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Covered benefits for alcohol dependence, drug dependence, or mental illness insurance policies, hospital or medical service plan contracts, and health

maintenance organization health plan contracts shall be limited to those services certified by the insurance or health care plan carrier's physician, psychologist, licensed clinical social worker, or advanced practice registered nurse as medically or psychologically necessary at the least restrictive appropriate level of care."

SECTION 5. Section 431M-4, Hawaii Revised Statutes, is amended to read as follows:

**"§431M-4 Mental illness, alcohol and drug dependence benefits.** (a) The covered benefit under this chapter shall not be less than thirty days of in-hospital services per year. Each day of in-hospital services may be exchanged for two days of nonhospital residential services, two days of partial hospitalization services, or two days of day treatment services. Visits to a physician, psychologist, licensed clinical social worker, or advanced practice registered nurse ~~[with a psychiatric or mental health specialty or subspecialty]~~ shall not be less than thirty visits per year to hospital or nonhospital facilities or to mental health outpatient facilities for day treatment or partial hospitalization services. Each day of in-hospital services may also be exchanged for two outpatient visits under this chapter; provided that the patient's condition is such that the outpatient services would reasonably preclude hospitalization. The total covered benefit for outpatient services in subsections (b) and (c) shall not be less than twenty-four visits per year; provided that coverage of twelve of the twenty-four outpatient visits shall apply only to the services under subsection (c). The other covered benefits under this chapter shall apply to any of the services in subsection (b) or (c). In the case of alcohol and drug dependence benefits, the insurance policy may limit the number of treatment episodes but may not limit the number to less than two treatment episodes per lifetime. Nothing in this section shall be construed to limit serious mental illness benefits.

(b) Alcohol and drug dependence benefits shall be as follows:

- (1) Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility which has a written affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:
  - (A) Room and board;
  - (B) Diagnostic x-rays;
  - (C) Laboratory testing; and
  - (D) Drugs, equipment use, special therapies, and supplies.
 Detoxification services shall be included as part of the covered in-hospital services, but shall not be included in the treatment episode limitation, as specified in subsection (a);
- (2) Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a qualified physician, psychologist, licensed clinical social worker, or advanced practice registered nurse shall determine that the person suffers from alcohol or drug dependence, or both. The substance abuse services covered under this paragraph shall include those services which are required for licensure and accreditation, and shall be included as part of the covered in-hospital services as specified in subsection (a). Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system, and services performed by mutual self-help groups; and

- (3) Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a qualified physician, psychologist, licensed clinical social worker, or advanced practice registered nurse and must be services reasonably expected to produce remission of the patient's condition. An individualized treatment plan approved by a licensed clinical social worker or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist. Services covered under this paragraph shall be included as part of the covered outpatient services as specified in subsection (a).
- (c) Mental illness benefits.
  - (1) Covered benefits for mental health services set forth in this subsection shall be limited to coverage for diagnosis and treatment of mental disorders. All mental health services shall be provided under an individualized treatment plan approved by a physician, psychologist, licensed clinical social worker, or advanced practice registered nurse ~~[with a psychiatric or mental health specialty or subspecialty]~~ and must be reasonably expected to improve the patient's condition. An individualized treatment plan approved by a licensed clinical social worker or an advanced practice registered nurse ~~[with a psychiatric or mental health specialty or subspecialty]~~ for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist;
  - (2) In-hospital and nonhospital residential mental health services as a covered benefit under this chapter shall be provided in a hospital or a nonhospital residential facility. The services to be covered shall include those services required for licensure and accreditation, and shall be included as part of the covered in-hospital services as specified in subsection (a);
  - (3) Mental health partial hospitalization as a covered benefit under this chapter shall be provided by a hospital or a mental health outpatient facility. The services to be covered under this paragraph shall include those services required for licensure and accreditation and shall be included as part of the covered in-hospital services as specified in subsection (a); and
  - (4) Mental health outpatient services shall be a covered benefit under this chapter and shall be included as part of the covered outpatient services as specified in subsection (a)."

SECTION 6. Section 467E-1, Hawaii Revised Statutes, is amended by amending the definitions of "practice of social work" and "social worker" or "licensed social worker" to read as follows:

"'Practice of social work' means applying the formal knowledge base, theoretical concepts, specific functional skills, and essential social values that are used to effect change in human behavior, emotional responses, and social conditions, and helping individuals, couples, families, groups, and community organizations enhance or restore their capacities for personal and social functioning [and] while preventing and controlling social problems. Social work practice is the professional application of social work values, principles, ethics, and techniques in the following areas:

- (1) Information, resource identification ~~[and development, and]~~, referral services~~[:]~~, mediation services, advocacy services, and education of individuals, groups, couples, and families;

- (2) Preparation and evaluation of [psychosocial] assessments and development and implementation of social work service plans;
  - (3) Case management, coordination, casework intervention, and monitoring of social work service plans in the areas of personal, social, or economic resources, conditions, or problems;
  - (4) Administration~~[;]~~ and development~~[;]~~ of social service programs, policies, community organization, planning, implementation, and involvement in the evaluation of social [work programs] systems and social policies;
  - ~~[(5) Treatment and prevention of psychosocial dysfunction, disability, or impairment, including emotional and mental disorders;~~
  - ~~(6)] (5) Social work consultation[;] and resource development;~~
  - ~~[(7)] (6) Research through the formal [organization] design and methodology of data collection and the analysis and evaluation of [social work] data [practice; or], social work programs, social systems, and social policies;~~
  - (7) Psychosocial assessment, diagnostic impressions, treatment of individuals, couples, families, and groups, prevention of psychosocial dysfunction, disability, or impairment, including emotional, mental, and behavioral disorders, and evaluation of practice effectiveness; and
  - (8) Clinical diagnosis or psychotherapy, or both, ~~[only if the practitioner is a]~~ provided by a licensed clinical social worker [who initially and triennially registers with the department and is granted permission to use the designation "C.S.W." or "clinical social worker" after providing proof of current certification by:
    - (A) The National Association of Social Workers as a qualified clinical social worker or diplomate in clinical social work; or
    - (B) The American Board of Examiners in Clinical Social Work as a board certified diplomate];
- "Social worker" [or "licensed social worker" means a person who:
- ~~(1) Uses the title of "social worker";~~
  - ~~(2) Has met the licensing requirements set forth in this chapter; and~~
  - ~~(3) Who engages in the practice of social work as defined in this section.]~~ or "S.W." means a person who has been issued a license as a licensed bachelor social worker, licensed social worker, or licensed clinical social worker to practice within the scope of practice as provided in this chapter."

SECTION 7. Section 467E-2, Hawaii Revised Statutes, is amended to read as follows:

**"[§467E-2] Social worker licensing program.** There is established a social worker licensing program within the department to be administered by the director~~[;]~~ that shall recognize the "licensed bachelor social worker" or "L.B.S.W.", the "licensed social worker" or "L.S.W.", and the "licensed clinical social worker" or "L.C.S.W."."

SECTION 8. Section 467E-3, Hawaii Revised Statutes, is amended to read as follows:

**"[§467E-3] Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the following powers and duties:



- (1) Grant permission to a person to use the title of social worker and engage in the practice of social work in this State pursuant to this chapter and the rules adopted pursuant thereto;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out ~~[the provisions of]~~ this chapter;
- (3) Administer, coordinate, and enforce this chapter and rules adopted pursuant thereto;
- (4) Discipline a ~~[licensed social worker]~~ licensee for any cause described by this chapter or for any violation of the rules, fine any government employee employed as a social worker for any cause described by this chapter, and refuse to license a person for failure to meet licensing requirements or for any cause that would be grounds for disciplining a ~~[licensed social worker;]~~ licensee; and
- (5) Appoint an advisory committee consisting of ~~[licensed]~~ three social workers and two members of the public to assist with the implementation of this chapter and the rules adopted pursuant thereto."

SECTION 9. Section 467E-5, Hawaii Revised Statutes, is amended to read as follows:

**"[§467E-5] License required.** No person shall purport to be a "social worker" ~~[or, "licensed bachelor social worker", "licensed social worker", licensed clinical social worker, or use the letters "S.W." [or], "L.B.S.W.", "L.S.W.", or "L.C.S.W." in connection with the person's name, or use any words or symbols indicating or tending to indicate that the person is a social worker, licensed bachelor social worker, licensed social worker, or licensed clinical social worker, or engage in the practice of social work as defined in this chapter without meeting the applicable requirements and holding a license as set forth in this chapter."~~

SECTION 10. Section 467E-6, Hawaii Revised Statutes, is amended to read as follows:

**"[§467E-6] Exemptions.** Licensure shall not be required of:

- (1) Any licensed person doing work within the scope of practice or duties of the person's profession that overlaps with the practice of social work; provided the person does not purport to be a social worker ~~[or licensed social worker]~~;
- (2) Any person employed by a federal, state, or county government agency in a social worker position, but only at those times when that person is carrying out the duties and responsibilities as a social worker in governmental employment; ~~[and]~~
- (3) Any student enrolled in an accredited educational institution in a recognized program of study leading toward attainment of a degree in social work; provided that the student's activities and services are part of a prescribed course of study supervised by the educational institution, and the student is identified by an appropriate title such as "social work student", "social work intern", or any other title which clearly indicates the student's training status~~[-]~~;
- (4) Any person who is a member of a mental health profession not requiring licensure; provided that the person functions only within the person's professional capacities; and provided further that the person does not purport to be a social worker;

- (5) Any person teaching, lecturing, consulting, or engaging in research in social work insofar as the activities are performed as part of or are dependent upon employment in a college or university; provided that the person shall not engage in the practice of social work outside the responsibilities of the person's employment;
- (6) Any person who is a duly recognized member of the clergy; provided that the person functions only within the person's capacities as a member of the clergy; and provided further that the person does not purport to be a social worker;
- (7) Any person who is obtaining supervised clinical experience for licensure as a psychologist, marriage and family therapist, or as another licensed professional; provided that the person's title indicates a trainee status; and provided further that the person does not purport to be a social worker; and
- (8) Any person in the process of obtaining three thousand hours of post masters clinical social work experience under the supervision of a licensed clinical social worker or individual identified in section 467E-7(3)(C)(ii) in order to qualify for a license as a licensed clinical social worker; and provided that the person calls oneself a clinical social work intern and is supervised while performing clinical diagnosis and psychotherapy."

SECTION 11. Section 467E-7, Hawaii Revised Statutes, is amended to read as follows:

**"§467E-7 Licensing requirements.** ~~[In addition to the licensing requirements provided by section 436B-11, the director shall consider the following as minimum evidence that an applicant is qualified to be licensed:]~~ Every applicant for a license as a social worker shall submit evidence satisfactory to the director that the applicant meets the following requirements:

- (1) ~~[The applicant holds]~~ For the licensed bachelor social worker, the applicant:
  - (A) Holds a bachelor's degree from a college or university in a social work program accredited by or deemed to be equivalent to a program accredited by the Council on Social Work Education; and
  - (B) Has passed the basic level national examination given by the Association of Social Work Boards;
- (2) For the licensed social worker, the applicant:
  - (A) Holds a master's degree from a college or university in a social work program accredited by or deemed to be equivalent to an accredited program by the Council on Social Work Education or a doctoral degree from a doctoral degree program in social work accredited by the Western Association of Schools and Colleges or a comparable regional accreditation body; and
- ~~[(2) The applicant has]~~ (B) Has passed the intermediate or higher level national examination given by the Association of Social Work Boards[-]; and
- (3) For the licensed clinical social worker, the applicant:
  - (A) Has met the educational requirements in paragraph (2);
  - (B) Has passed the clinical level national examination given by the Association of Social Work Boards; and
  - (C) Has provided evidence of successful completion of at least three thousand hours of post masters clinical social work experience

under supervision completed within no fewer than two years, but within no more than five years. Clinical social work experience shall include a minimum of two thousand hours of assessment, clinical diagnosis, and psychotherapy; no more than a maximum of nine hundred hours of client-centered advocacy, consultation, and evaluation; and at least one hundred hours of direct face-to-face supervision. At least sixty of the one hundred hours of direct face-to-face supervision shall have been individualized supervision and the remaining forty hours may have been under small group (up to six supervisees) supervision; provided that:

- (i) The supervisor shall have been a licensed clinical social worker with at least four thousand five hundred hours of post masters clinical social work experience;
- (ii) For the first five years after the effective date of this Act, the following individuals shall be deemed to have satisfied the requirements of a supervisor: a person with a master's degree in social work with at least four thousand five hundred hours post masters clinical social work experience; an individual who holds a diplomate in clinical social work or a board certified diplomate certification; or a board certified psychiatrist, psychologist, advanced practice registered nurse who has a minimum of four thousand five hundred hours of post masters clinical experience in assessment, clinical diagnosis, and psychotherapy; and
- (iii) Supervision shall have occurred in an agency setting that provides clinical diagnosis and psychotherapy.

An applicant who submits evidence of certification as a qualified clinical social worker or diplomate in clinical social work by the National Association of Social Workers or as a board certified diplomate by the American Board of Examiners shall be deemed to have satisfied the experience requirements of this subparagraph."

SECTION 12. Section 467E-7.5, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~467E-7.5(~~1~~)] Reciprocity and endorsement.** (a) The director may enter into reciprocity agreements with other states and issue a license to a social worker who has been licensed in that state; provided that the requirements for a license in the state ~~[that]~~ in which the applicant is licensed are deemed by the director to be equal to or greater than the current requirements for a license in this State ~~[at the date of the license]~~.

(b) The director may also issue a license by endorsement by honoring a passing score on the examination of the Association of Social Work Boards; provided that at a minimum, the applicant meets the other requirements under ~~[section]~~ sections 467E-7 and 467E-9, and the passing score is from the examination category that is required for licensure in this State and the other state uses for its license."

SECTION 13. Section 467E-9, Hawaii Revised Statutes, is amended to read as follows:

**"§467E-9 Examination for license.** (a) Each applicant for licensure shall take and pass a ~~[written]~~ national examination administered by the Association of

Social Work Boards in accordance with procedures and standards prescribed by the director.

(b) ~~[Applicants who have passed the Academy of Certified Social Workers examination administered by the National Association of Social Workers prior to June 30, 1995, shall be deemed to have satisfied the requirements of this section only if the application for licensure is filed with the department by June 30, 2000.] Applicants for the “licensed clinical social worker” or “L.C.S.W.” license who have passed the diplomate clinical assessment examination administered by the National Association of Social Workers before the effective date of this Act shall be deemed to have satisfied the requirement of this section only if the application for licensure is filed with the department by June 30, 2005.~~

(c) The examination fee shall be paid by the applicant directly to the Association of Social Work Boards.”

SECTION 14. Section 467E-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore, or may deny, revoke, suspend, or condition in any manner any license, or fine any exempt government employee for any one or more of the following acts or conditions on the part of the applicant, licensee, or exempt person:

- (1) Failing to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Being addicted to, dependent on, or being a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (3) ~~[Practicing the profession]~~ Engaging in the practice of social work while impaired by alcohol, drugs, or mental instability;
- (4) Procuring a social work license through fraud, misrepresentation, or deceit;
- (5) Aiding and abetting an unlicensed person to directly or indirectly use the title “social worker” or engage in practice as a “licensed bachelor social worker”, “licensed social worker”[;], or “licensed clinical social worker”;
- (6) Engaging in professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of social work;
- (7) Engaging in conduct or practice contrary to recognized standards of ethics for the social work profession;
- (8) Failing to comply, observe, or adhere to any law in a manner such that the director deems the applicant or holder to be an unfit or improper person to hold a social work license;
- (9) Revocation, suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by this section;
- (10) Having a criminal conviction, whether by nolo contendere or otherwise, of a crime directly related to the qualifications, functions, or duties of the social work profession;
- (11) Failing to report in writing to the director any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days of the disciplinary decision;
- (12) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under this chapter who purports to be or engages in practice as a social worker [or], licensed bachelor social worker, licensed social worker[;], or licensed clinical social worker;

- (13) Engaging in the practice of social work beyond the scope of the person's license; or  
~~[(13)]~~ (14) Violating this chapter or any rules adopted pursuant thereto."

SECTION 15. Section 467E-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall:

- (1) Use in connection with the person's name any designation tending to imply that the person is a social worker, licensed bachelor social worker, licensed social worker, or licensed clinical social worker unless the person is duly licensed and authorized under this chapter;
- (2) Represent oneself as a social worker, licensed bachelor social worker, licensed social worker, or licensed clinical social worker during the time the person's license issued under this chapter is forfeited, terminated, suspended, or revoked; ~~or~~
- (3) Perform clinical diagnosis or psychotherapy unless the person is:
  - (A) A) a licensed clinical social worker~~;~~ and
  - (B) ~~Registered as a clinical social worker as provided by paragraph (8) of the definition of "practice of social work" in section 467E-1.;~~ or
- (4) Engage in autonomous and independent clinical social work practice without being licensed as a licensed clinical social worker."

SECTION 16. Section 467E-15, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§467E-15**~~]]~~ **Privileged communication.** Communications between ~~[registered]~~ licensed clinical social workers and their clients shall be treated in the same manner as provided for psychologist-client privilege under rule 504.1 of the Hawaii Rules of Evidence."

SECTION 17. Act 229, Session Laws of Hawaii 2001, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval ~~[and shall be repealed on January 1, 2003]."~~

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 19. This Act shall take effect upon its approval; provided that sections 2 to 16 shall take effect on July 1, 2004.

(Approved June 18, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 168

H.B. NO. 2518

A Bill for an Act Relating to Emergency Medical Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-224, Hawaii Revised Statutes, is amended to read as follows:

**“§321-224 Department of health, functions, duties.** (a) In addition to other functions and duties assigned under this part, the department shall:

- (1) Regulate ambulances and ambulance services;
- (2) Establish emergency medical services throughout the State, which shall meet the requirements of this part, subject to section 321-228;
- (3) Review and approve the curricula and syllabi of training courses offered to emergency medical services personnel who provide basic, intermediate, and advanced life support, consult and coordinate with the University of Hawaii, or any other accredited community college, college, or university, or any professional organization that provides emergency medical services training, regarding the training for basic, intermediate, and advanced life support personnel, as provided in section 321-229;
- (4) Collect and evaluate data for the continued evaluation of the state system, subject to section 321-230;
- (5) Coordinate emergency medical resources and the allocation of the state system's services and facilities in the event of mass casualties, natural disasters, national emergencies, and other emergencies, ensuring linkage to local, state, and national disaster plans, and participation in exercises to test these plans;
- (6) Establish, administer, and maintain a communication system for the state system;
- (7) Assist each county in the development of a “911” emergency telephone system;
- (8) Secure technical assistance and other assistance and consultation necessary for the implementation of this part, subject to section 321-230;
- (9) Implement public information and education programs to inform the public of the state system and its use, and disseminate other emergency medical information, including appropriate methods of medical self-help and first-aid, and the availability of first-aid training programs in the State;
- (10) Establish standards and provide training for dispatchers in the state system, and maintain a program of quality assurance for dispatch equipment and operations;
- (11) Establish a program that will enable emergency service personnel to provide early defibrillation;
- (12) Establish within the department the emergency medical service system for children;
- (13) Consult with the advisory committee on matters relating to the implementation of this part; and
- (14) Establish and maintain standards for emergency medical services course instructor qualifications and requirements for emergency medical services training facilities.

(b) The department may assist in the implementation of a statewide poison information program, including the provision of a hospital-based poison center's services certified by the department."

SECTION 2. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 2002.)

**Note**

1. No bracketed and stricken material.

**ACT 169**

H.B. NO. 2521

A Bill for an Act Relating to Control of Disease.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the tragic events of September 11, 2001, have focused attention on the State's ability to protect the health, safety, and well-being of its citizens and visitors. New and emerging dangers, including emergent and resurgent infectious diseases and incidents of civilian mass casualties, pose serious and immediate threats to the population.

Emergency health threats, including those caused by bioterrorism and epidemics, may require the exercise of extraordinary government functions. Therefore, an examination of our resources for the prevention, detection, management, and containment of public health emergencies should be undertaken.

The emergency powers embodied in chapters 127 and 128, Hawaii Revised Statutes, as vested in the civil defense system, are adequate to enable the State to respond rapidly and effectively to potential or actual public health emergencies. Accordingly, nothing in this Act is intended to supersede or otherwise limit chapters 127 and 128, Hawaii Revised Statutes.

Modifications to the authority of the department of health, as expressed in this Act, will enable the department to respond more effectively to emerging health problems prior to the need for declaration of a civil defense emergency.

Physical and workforce resources of the department may be inadequate to deal swiftly and effectively with emerging health problems resulting from a life-threatening epidemic or terrorist event, and assistance of private healthcare facilities and providers may be needed to protect the State's citizens and visitors. Therefore, the legislature finds and declares that public support of private healthcare facilities and providers that have assisted the department of health in dealing with emerging health problems resulting from an epidemic or terrorist event is in the public interest and for the public health, safety, and general welfare.

This Act provides for development of collaborative agreements to enable private providers to assist the department in carrying out essential public health functions under the direction of the department with the intent that they will be fairly compensated as well as protected in carrying out this vital public purpose.

SECTION 2. Chapter 325, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

**“§325- Agreements; collaborative assistance in control of disease outbreaks.** (a) The director may enter into agreements for collaborative assistance with licensed health care facilities and health care providers in the State to control an epidemic of a dangerous disease, which requires more physical facilities, materials, or personnel than the department has available.

(b) Whenever used in this section, unless a different meaning clearly appears from the context:

“Dangerous disease” means any illness or health condition that might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

“Department” means the department of health.

“Director” means the director of health.

“Epidemic” means the occurrence of cases of an illness clearly in excess of normal expectancy, as determined by the director.

“Health care facility” means a facility as defined in section 323D-2.

“Health care provider” means a provider as defined in section 323D-2.

(c) Under collaborative agreements, health care facilities or health care providers shall provide prophylactic and treatment services for the epidemic disease in collaboration with and under the general direction of the department and shall seek reimbursement from the individuals who receive medical care, the parties responsible for their care, or their health plans. Persons having health plan benefits shall be responsible for any copayments to the facilities or health care providers.

(d) The agreements may provide that the department shall use reasonable efforts to seek legislative appropriations to reimburse health care facilities and health care providers for the use of physical facilities, professional services, and materials provided to persons without health plan coverage.

(e) Except in cases of wilful misconduct, the following persons shall not be liable for the death of or injury to any person who is provided care pursuant to this section or for damage to property when resulting from any act or omission in the performance of such services:

- (1) The State or any political subdivision;
- (2) A health care facility or health care provider acting at the direction of the department under an agreement as provided in this section; and
- (3) Persons engaged in disease prevention and control functions pursuant to this section or sections 325-8 and 325-9, including volunteers whose services are accepted by any authorized person.”

SECTION 3. Section 321-1, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) When in the judgment of the director, there is deemed to be a potential health hazard, the department~~[, through the director,]~~ may take precautionary measures to protect the public through the imposition of an embargo ~~[or]~~, the detention of products regulated by the department, ~~[or]~~ the removal of products regulated by the department from the market, ~~[or]~~ the declaration of quarantine~~;~~, or by sequestering items suspected to be contaminated by toxic or infectious substances; provided that the director ~~[must]~~ shall find evidence of a health hazard within ~~[seventy-two hours]~~ seven days of the action taken or rescind the action. The director shall make public the findings.”

SECTION 4. Section 321-311.5, Hawaii Revised Statutes, is amended to read as follows:



**“[§321-311.5] Epidemiologic investigations.** (a) The department may conduct investigations to determine the nature and extent of diseases and injuries deemed by the department to threaten the public health and safety.

(b) Every person, health care provider, and medical facility shall provide the patient's name, the name of a minor patient's parent or guardian, address, telephone number, age, sex, race or ethnicity, clinical signs and symptoms, laboratory test results, diagnostic interview data, treatment provided, and the disposition of the patient when requested by an authorized representative of the director for the purpose of conducting such an investigation. The authorized representative may only view the limited portion of the patient's medical record, which is directly relevant in time and scope to the subject of the investigation.

(c) Every person, company, organization, association, health care provider, medical facility, or any other possible source of information shall provide names, addresses, telephone numbers, and locating information regarding an individual or group of individuals suspected of having been exposed to a disease or disease-causing substance that is the subject of an epidemiologic investigation when requested by an authorized representative of the director.

For the purposes of this subsection, “locating information” includes information contained in appointment, reservation, registration, invitation, attendance, billing, payment lists, or any other record that may help the department identify, locate, or contact individuals or groups suspected of having been exposed to a disease under investigation.

(d) No person, company, organization, association, health care provider, [or] medical facility, or other source that provides information requested by an authorized representative of the director, for the purpose of conducting an investigation under this section, shall be held civilly or criminally liable for providing that information to the department.

(e) All information provided to the department under this section shall be kept strictly confidential, except as the director determines is necessary to protect the public health and safety. Access to confidential records shall be restricted to those individuals specifically authorized to participate in any given investigation. However, epidemiologic and statistical information with no individual identifying information may be released to the public. The identities of individuals whose medical records are investigated shall be disclosed only to those persons authorized by the director or the director's representative to conduct a specific investigation under this section or determined by the director to be necessary to protect the health and safety of the public.”

SECTION 5. Section 325-8, Hawaii Revised Statutes, is amended to read as follows:

**“§325-8 Infected persons [~~removal~~] and quarantine.** [~~When any person is infected or suspected of being infected with any infectious, communicable, or other disease dangerous to the public health, the department of health or its agent, may, for the safety of the public, remove the sick or infected person to a separate house or hospital, and provide the person with medical care and other necessities, which shall be at the expense of the person's self, the person's parents or guardian, if able to meet the expense, otherwise at the expense of the county in which the person is ill or infected. The county council shall pay the expenses upon certification by the department or its agents that a person has been so removed and that expense has been incurred under this section.]~~ (a) As used in this section:

“Communicable disease” means any disease declared to be “communicable” by the director of health.

“Dangerous disease” means a disease as defined in section 325-

“Quarantine” means the compulsory physical separation, including the restriction of movement or confinement of individuals or groups believed to have been exposed to or known to have been infected with a contagious disease, from individuals who are believed not to have been exposed or infected, by order of the department or a court of competent jurisdiction.

(b) In implementing a quarantine, the dignity of the individual quarantined shall be respected at all times and to the greatest extent possible, consistent with the objective of preventing or limiting the transmission of the disease to others. The needs of individuals quarantined shall be addressed in as systematic and competent a fashion as is reasonable under the circumstances. To the greatest extent possible, the premises in which individuals are quarantined shall be maintained in a safe and hygienic manner, designed to minimize the likelihood of further transmission of infection or other harm to individuals subject to quarantine. Adequate food, clothing, medication, and other necessities, access to counsel, means of communication with those in and outside these settings, and competent medical care shall be provided to the person quarantined.

To the greatest extent possible, cultural and religious beliefs shall be considered in addressing the needs of quarantined individuals. The department may establish and maintain places of quarantine and quarantine any individual by the least restrictive means necessary to protect the public health.

The department shall take all reasonable means to prevent the transmission of infection between or among quarantined individuals. The quarantine of any individual shall be terminated when the director determines that the quarantine of that individual is no longer necessary to protect the public health.

(c) An individual subject to quarantine shall obey the department’s rules and orders, shall not go beyond the quarantined premises, and shall not put the individual’s self in contact with any individual not subject to quarantine other than a physician, health care provider, or individual authorized to enter a quarantined premises by the department. Violation of any of the provisions of this subsection is a misdemeanor.

(d) No individual, other than an individual authorized by the department, shall enter a quarantined premises. Any individual entering a quarantined premises without permission of the department shall be guilty of a misdemeanor. If, by reason of an unauthorized entry into a quarantined premises, the individual poses a danger to public health, the individual may be subject to the quarantine pursuant to this section.

(e) Before quarantining an individual, the department shall obtain a written, ex parte order from a court of this State authorizing such action. A petition for an ex parte order shall be filed with the circuit court of the circuit in which the individual resides, is suspected of residing, or is quarantined under subsection (f). Proceedings on or related to a petition for an ex parte order shall be a civil action. The court shall grant an ex parte order upon finding that probable cause exists to believe a quarantine is warranted pursuant to this section. A copy of the ex parte order shall be given to the individual quarantined, along with notification that the individual has a right to a hearing under this section.

(f) Notwithstanding subsection (e), the department may quarantine an individual without first obtaining a written, ex parte order from the court if any delay in the quarantine of the individual would pose an immediate threat to the public health. Following such a quarantine, the department shall promptly obtain a written, ex parte order from the court authorizing the quarantine.

(g) An individual quarantined pursuant to subsection (e) or (f) shall have the right to a court hearing to contest the ex parte order. If the individual, the individual’s guardian ad litem, or the individual’s counsel requests a hearing, the hearing shall be held within fourteen days of filing of the request. The request shall

be in writing and shall be filed with the circuit court in the circuit in which the individual is quarantined. A request for a hearing shall not alter or stay the quarantine of the individual. The department shall be notified of the request for a hearing at least ten days before the hearing. At the hearing, the department shall show that the quarantine is warranted pursuant to this section. If, after hearing all relevant evidence, the court finds that the criteria for quarantine under subsection (i) have been met by clear and convincing evidence, the court shall authorize the continued quarantine of the individual.

(h) On or after thirty days following the issuance of an ex parte order or a hearing as provided for in this section, an individual quarantined pursuant to this section may request in writing a court hearing to contest the continued quarantine. The hearing shall be held within fourteen days of the filing of the request. The request shall be in writing and shall be filed with the circuit court for the circuit in which the individual is quarantined. A request for a hearing shall not alter or stay the order of quarantine. The department shall be notified of the request for a hearing at least ten days before the hearing. At the hearing, the department shall show that continuation of the quarantine is warranted pursuant to this section. If, after hearing all relevant evidence, the court finds that the criteria for the quarantine under subsection (i) have been met by clear and convincing evidence, the court shall authorize the continued quarantine of the individual.

(i) A court may order an individual to be quarantined if the court finds that:

(1) The individual is reasonably believed to have been exposed to or known to have been infected with a communicable or dangerous disease; and

(2) A quarantine is the least restrictive means by which the public's health, safety, and welfare can be protected, due to the transmittable nature of the communicable or dangerous disease and the lack of preventive measures, or due to the failure by the individual quarantined to accept or practice less restrictive measures to prevent disease transmission.

(j) An individual quarantined pursuant to this section may request a hearing in the courts of this State regarding the individual's treatment and the terms and conditions of the quarantine. Upon receiving a request, the court shall fix a date for a hearing. The hearing shall take place within fourteen days of the filing of the request with the court. The request for a hearing shall not alter or stay the order of quarantine. The department shall be notified of the request for a hearing at least ten days before the hearing. If, upon a hearing, the court finds that the quarantine of the individual is not in compliance with subsection (b), the court may fashion remedies reasonable under the circumstances and consistent with this chapter.

(k) Judicial decisions shall be based upon clear and convincing evidence, and a written record of the disposition of the case shall be made and retained. If the personal appearance before the court of a quarantined individual is determined by the director to pose a threat to individuals at the proceeding and the quarantined individual does not waive the right to attend the proceeding, the court shall appoint a guardian ad litem as provided in article V of chapter 560, to represent the quarantined individual throughout the proceeding or shall hold the hearing via any means that allow all parties to participate as fully and safely as is reasonable under the circumstances.

(l) Upon written request, the court shall appoint counsel at state expense to represent individuals or groups of individuals who are or who are about to be quarantined pursuant to this section and who are not otherwise represented by counsel. Adequate means of communication between those individuals or groups and their counsel and guardians ad litem shall be provided.

(m) In any proceeding brought pursuant to this section, in consideration of the protection of the public's health, the severity of the emergency, and the

availability of necessary witnesses and evidence, the court may order the consolidation of claims by individuals involved or to be affected by a quarantine where:

- (1) The number of individuals involved or to be affected by a quarantine is so large as to render individual participation impractical;
  - (2) There are questions of law or fact common to the individual claims or rights to be determined;
  - (3) The group claims or rights to be determined are typical of the affected individuals' claims or rights; and
  - (4) The entire group will be adequately represented in the consolidation.
- (n) Each individual quarantined shall be responsible for the costs of food, lodging, and medical care, except for those costs covered and paid by the individual's health plan."

SECTION 6. Section 325-79, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 325-80, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 325-81, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 325-82, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 325-83, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 325-84, Hawaii Revised Statutes, is repealed.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that extent the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect upon its approval.

(Approved June 18, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 170**

S.B. NO. 796

A Bill for an Act Relating to State and County Tort Liability.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§663- Exception to liability for county lifeguard services.** (a) For the purpose of this section:

"County lifeguard" means a person employed as a lifeguard by a county of this State.

"Employing county" means the county employing a county lifeguard.

## ACT 171

(b) Notwithstanding any other law to the contrary, a county lifeguard, the employing county, and the State shall not be liable for any civil damages resulting from any act or omission of the lifeguard while providing rescue, resuscitative, or other lifeguard services on the beach or in the ocean in the scope of employment as a county lifeguard. This exception from liability, however, shall not apply when the claim for civil damages results from a county lifeguard's gross negligence or wanton act or omission."

SECTION 2. Act 190, Session Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect on July 1, 1996; provided that this Act shall be repealed on June 30, [2003:] 2007."

SECTION 3. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval; provided that section 1 of this Act shall be repealed on June 30, 2007.

(Approved June 18, 2002.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 171

H.B. NO. 771

A Bill for an Act Relating to Crime.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the public trust in elected officials has been shaken by recent criminal convictions of public officers. In particular, elected officials have been allowed to continue to hold public office, attend official meetings, and even vote at these meetings after being convicted of crimes that disqualify them from office. The laws have been interpreted to apply removal of convicted officials only after the imposition of sentence for the conviction and not upon conviction itself.

The purpose of this Act is to make it clear and unequivocal that upon the date of conviction by the trier of fact or a guilty determination by the court, the elected official shall be removed from office and not allowed to act in any official capacity.

SECTION 2. Section 831-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A public office held at the time of [sentence] conviction is forfeited as of the date of the [sentence] conviction, if the [sentence] conviction is in this State, or, if the [sentence] conviction is in another state or in a federal court, as of the date a certification of the [sentence] conviction from the [sentencing] trial court is filed in the office of the lieutenant governor who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the

conviction or sentence does not affect the application of this section, but if the conviction is reversed the defendant shall be restored to any public office forfeited under this chapter from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture.

For purposes of this section, "time of conviction" means the day upon which the person was found guilty of the charges by the trier of fact or determined to be guilty by the court."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 19, 2002.)

## ACT 172

H.B. NO. 1878

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the Hawaii state student council has been functioning for many years. However, although the council is mentioned in the state constitution, it has never been formally established in statute. In establishing the council statutorily, this Act continues the operations of the existing council and requires it to:

- (1) Determine its composition and governance policies; and
- (2) Select or run an election for the student member of the board of education.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“§302A- Hawaii state student council.** (a) There is established within the department for administrative purposes the Hawaii state student council, which shall consist of representation from each departmental school district.

(b) The council shall determine whether it shall directly select the student member of the board or whether it shall run an election to select that individual.

(c) The council shall establish policies and procedures governing its operations, including the selection and number of council members, without regard to the public notice, public hearing, and gubernatorial approval requirements of chapter 91, but subject to the open meeting requirements of chapter 92.

(d) The Hawaii state student council shall cooperate with the student conference committee established under section 317-2 in planning the annual secondary school students conference established under chapter 317.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved June 19, 2002.)

## Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 173

H.B. NO. 2455

A Bill for an Act Relating to Environmental Site Cleanup.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to establish a revolving fund to provide low interest loans for the cleanup of brownfields properties in Hawaii. The United States Environmental Protection Agency defines brownfields as “abandoned, idled, or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.” The department of business, economic development, and tourism has applied for a grant from the United States Environmental Protection Agency’s Brownfields Cleanup Revolving Loan Fund Pilot Program for up to \$3,000,000 in seed money to capitalize the revolving loan fund.

Brownfields redevelopment serves several objectives. One is the economic revitalization of communities through the redevelopment and reuse of abandoned and underutilized sites. Another is the elimination or reduction of potential public and environmental health risks through the cleanup of contaminated sites. Brownfields redevelopment also promotes more efficient and effective use of the State’s existing urbanized areas, and assists in relieving development pressure on undeveloped open lands or agricultural lands.

The financial risks and potential liability associated with the reuse of brownfields sites is a barrier to brownfields redevelopment. The revolving loan fund would make available to brownfields project developers low cost loans to cleanup sites and reduce the perceived risk of brownfields projects to lenders and insurers. The revolving loan fund mechanism provides potential borrowers with flexibility to respond to market opportunities throughout the year. It also allows worthy projects that are not a priority to state agencies, but are of priority to a community, an avenue for potential cleanup financing. Thus, the legislature finds and declares that the use of moneys in the brownfields cleanup revolving loan fund for brownfields site cleanup is in the public interest and will promote the public health, safety, and general welfare of the people of this State.

SECTION 2. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201- Brownfields cleanup revolving loan fund.** (a) There is established in the state treasury the brownfields cleanup revolving loan fund, into which shall be deposited:

- (1) Funds from federal or private funding sources;
- (2) Moneys received as repayment of loans and interest payments; and
- (3) Any fees collected by the department under this section.

(b) Moneys in the brownfields cleanup revolving loan fund shall be used to provide low interest loans or other authorized financial assistance to eligible public, private, and nonprofit borrowers for cleanup activities of contaminated sites, and site monitoring activities necessary to determine the effectiveness of a cleanup. All environmental response activities receiving funding shall be in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, P.L. 96-510 (42 U.S.C. §§9601-9675), as amended, and shall be consistent with the

National Oil and Hazardous Substances Pollution Contingency Plan at 40 Code of Federal Regulations Part 300. Moneys from the fund may be used to cover administrative and legal costs of fund management and site management associated with individual loans, to include personnel, services, materials, equipment, and travel for the purposes of this section; provided that the moneys used for these purposes shall not exceed the amounts allowed by the United States Environmental Protection Agency's Brownfields Cleanup Revolving Loan Fund Pilot Program.

(c) The fund shall be administered by the department of business, economic development, and tourism. Appropriations or authorizations from the fund shall be expended by the department. The department may contract with other public or private entities for the provision of all or a portion of the services necessary for the administration and implementation of the loan fund program. The department may set fees or charges for fund management and technical site assistance provided under this section. The department may adopt rules pursuant to chapter 91 to carry out the purposes of this section.

(d) All interest earned on the deposit or investment of the moneys in the fund shall become a part of the fund.

(e) The department shall provide an annual report to the governor and the legislature describing all transactions and activities involved in the administration of the brownfields cleanup revolving loan fund."

SECTION 3. There is appropriated out of the brownfields cleanup revolving loan fund the sum of \$1,000,000, or so much thereof as may be necessary, for fiscal year 2002-2003 to carry out the purposes of this Act. The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2002, and shall be repealed on June 30, 2007.

(Approved June 19, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 174**

S.B. NO. 2831

A Bill for an Act Relating to an Extension of the Residential Construction and Remodeling Income Tax Credit.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 10 of the Third Special Session of 2001 (Act 10), in part, enacted a new nonrefundable four per cent residential construction and remodeling income tax credit (credit). The credit enacted by Act 10 is applicable to a taxpayer who incurs construction or remodeling costs up to \$250,000 per unit before July 1, 2002, for residential real property in taxable years beginning after December 31, 2000, but not to taxable years beginning after December 31, 2003.

The purpose of this Act is to further stimulate economic activity in the residential construction industry by extending the credit for construction or remodeling costs incurred before July 1, 2003, and to provide further clarification of the costs for which the credit may be claimed.



SECTION 2. Act 10, Third Special Session Laws of Hawaii 2001, is amended by amending section 1 to amend section 235- , Hawaii Revised Statutes, as follows:

(1) By amending subsection (a) to read as follows:

“(a) There shall be allowed to each taxpayer[;] who is the owner, developer, or lessee of residential real property, subject to the taxes imposed by this chapter, a residential construction and remodeling tax credit that shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the tax credit claimed under this section by the taxpayer in all years for which the credit is available shall be limited to four per cent of the residential construction or remodeling costs incurred[;] during the taxable year for which the credit is claimed; provided that the costs shall not exceed \$250,000 in the aggregate for each residential unit; and that the costs are incurred before July 1, [2002:] 2003.

In the case of a partnership, S corporation, estate, trust, or association of apartment owners, the tax credit allowable is for construction or remodeling costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the construction or remodeling cost for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.”

(2) By amending the definition of “construction or remodeling cost” in subsection (g) to read as follows:

““Construction or remodeling cost” means any costs incurred after December 31, 2000, for plans, design, construction, and equipment that is permanently affixed to the building or structure related to new construction, alterations, or modifications to a residential [real property:] apartment unit or house, and shall not include any costs for which another credit was claimed under this chapter.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2001.

(Approved June 21, 2002.)

## ACT 175

H.B. NO. 1245

A Bill for an Act Relating to the State Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that expenditures from the emergency and budget reserve fund established by section 328L-3, Hawaii Revised Statutes, are

needed to meet the emergency economic situation currently facing the State. The legislature determines that the moneys are urgently needed to maintain levels of programs that are essential to the public health, safety, and welfare. The legislature further finds that the appropriations in this Act are consistent with the purposes of the emergency and budget reserve fund.

The purpose of this Act is to appropriate \$10,431,294 from the emergency and budget reserve fund to maintain levels of programs that are essential to the public health, safety, and welfare.

SECTION 2. There is appropriated out of the emergency and budget reserve fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2002-2003 for a grant to Hawaii Intergenerational Network for program expenses.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. There is appropriated out of the emergency and budget reserve fund the sum of \$242,499 or so much thereof as may be necessary for fiscal year 2002-2003 for a grant to Parents and Children Together for program expenses.

The sum appropriated shall be expended by the department of human services to carry out the purposes of this Act.

SECTION 4. There is appropriated out of the emergency and budget reserve fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2002-2003 for a grant to Good Beginnings Alliance for program expenses.

The sum appropriated shall be expended by the department of human services to carry out the purposes of this Act.

SECTION 5. There is appropriated out of the emergency and budget reserve fund the sum of \$421,161 or so much thereof as may be necessary for fiscal year 2002-2003 for a grant to Blueprint for Change for program expenses.

The sum appropriated shall be expended by the department of human services to carry out the purposes of this Act.

SECTION 6. There is appropriated out of the emergency and budget reserve fund the sum of \$400,000 \$0<sup>1</sup> or so much thereof as may be necessary for fiscal year 2002-2003 for a grant to Wahiawa General Hospital for program expenses.

The sum appropriated shall be expended by the department of health to carry out the purposes of this Act.

SECTION 7. There is appropriated out of the emergency and budget reserve fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003 for oral health (dental sealant and dental hygiene) program expenses.

The sum appropriated shall be expended by the department of health to carry out the purposes of this Act.

SECTION 8. There is appropriated out of the emergency and budget reserve fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the pre-school open doors program.

The sum appropriated shall be expended by the department of human services to carry out the purposes of this Act.

SECTION 9. There is appropriated out of the emergency and budget reserve fund the sum of \$300,000 \$0<sup>1</sup> or so much thereof as may be necessary for fiscal year 2002-2003 for the tobacco prevention and cessation program.

The sum appropriated shall be expended by the department of health to carry out the purposes of this Act.

SECTION 10. There is appropriated out of the emergency and budget reserve fund the sum of \$2,192,698 or so much thereof as may be necessary for fiscal year 2002-2003 for substance abuse treatment program expenses.

The sum appropriated shall be expended by the department of health to carry out the purposes of this Act.

SECTION 11. There is appropriated out of the emergency and budget reserve fund the sum of \$2,535,000 or so much thereof as may be necessary for fiscal year 2002-2003 for program expenses of rural hospitals.

The sum appropriated shall be expended by the department of health to carry out the purposes of this Act.

SECTION 12. There is appropriated out of the emergency and budget reserve fund the sum of \$1,650,000 or so much thereof as may be necessary for fiscal year 2002-2003 for program expenses relating to the medically uninsured.

The sum appropriated shall be expended by the department of health to carry out the purposes of this Act.

SECTION 13. There is appropriated out of the emergency and budget reserve fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003 for program expenses relating to the homeless.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii to carry out the purposes of this Act.

SECTION 14. There is appropriated out of the emergency and budget reserve fund the sum of \$339,936 or so much thereof as may be necessary for fiscal year 2002-2003 for rent supplement payments.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii for the purposes of this Act.

SECTION 15. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

**Note**

1. Item vetoed, replaced, and initialed "BJC".

**ACT 176**

H.B. NO. 1256

A Bill for an Act Relating to Solid Waste Management.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that recycling is an important element of an integrated solid waste management system, which can protect and preserve environmental resources and reduce economic costs to residents and businesses within the State. The legislature finds a need to expand participation in recycling programs and to minimize costs to those participating and to government. The purpose of this Act is to increase participation and recycling rates for specified deposit beverage containers, provide a connection between manufacturing decisions and recycling program management, and reduce litter.

SECTION 2. Chapter 342G, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . DEPOSIT BEVERAGE CONTAINER PROGRAM**

**§342G-A Definitions.** As used in this part, unless the context requires otherwise:

“Auditor” means the office of the auditor.

“Consumer” means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit.

“Dealer” means a person who engages in the sale of beverages in deposit beverage containers to a consumer for off-premises consumption in the State.

“Department” means the department of health.

“Deposit beverage” means beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks regardless of dairy-derived product content, soda, or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container.

The term “deposit beverage” excludes the following:

- (1) A liquid which is:
  - (A) A syrup;
  - (B) In a concentrated form; or
  - (C) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;
- (2) A liquid which is a drug, medical food or infant formula as defined by the Federal Food Drug and Cosmetic Act (21 U.S.C Sec. 301 et seq.);
- (3) A liquid which is designed and consumed only as a dietary supplement and not as a beverage as defined in the Dietary Supplement Health and Education Act of 1994 (P.L. 103-417);
- (4) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;
- (5) Products designed to be consumed in a frozen state;
- (6) Instant drink powders;
- (7) Seafood, meat, or vegetable broths, or soups, but not juices; and
- (8) Milk and all other dairy-derived products, except tea and coffee drinks with trace amounts of these products.

“Deposit beverage container” means the individual, separate, sealed glass, polyethylene terephthalate, high density polyethylene, or metal container less than or equal to sixty-four fluid ounces, used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this State.

“Deposit beverage distributor” means a person who is a manufacturer of beverages in deposit beverage containers in this State, or who imports and engages in the sale of filled deposit beverage containers to a dealer or consumer. The term includes federal agencies and military distributors, but does not include airlines and shipping companies that merely transport deposit beverage containers.

“Import” means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or any entity outside of the State.

“Importer” means any person who buys, brings, or accepts delivery of deposit beverage containers from outside the State for sale or use within the State.

“On-premises consumption” means to consume deposit beverages by a consumer immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes.

“Person” means individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Recycling facility” means all contiguous land and structures and other appurtenances, and improvements on the land used for the collection, separation, recovery, and sale of reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

“Redeemer” means a person, other than a dealer or distributor, who demands the refund value in exchange for the empty deposit beverage container.

“Redemption center” means an operation which accepts from consumers and provides the refund value for empty deposit beverage containers intended to be recycled and ensures that the empty deposit beverage containers are properly recycled.

“Refillable beverage container” means any deposit beverage container which ordinarily would be returned to the manufacturer to be refilled and resold.

“Reverse vending machine” means a mechanical device, which accepts one or more types of empty deposit beverage containers and issues a redeemable credit slip with a value not less than the container’s refund value. The refund value payments shall be aggregated and then paid if more than one container is redeemed in a single transaction.

**§342G-B Deposit beverage container fee.** (a) Beginning on October 1, 2002, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each polyethylene terephthalate, high density polyethylene, or metal deposit beverage container manufactured in or imported into the State. The fee shall be imposed only once on the same beverage container. The fee shall be 0.5 cents per beverage container.

(b) Beginning on October 1, 2004 every deposit beverage distributor shall pay to the department a deposit beverage container fee on each deposit beverage container manufactured in or imported into the State. The fee shall be imposed only once on the same beverage. The fee shall be 1 cent per beverage container.

(c) No county shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this chapter.

(d) Beginning January 1, 2005, the deposit beverage container fees shall be based on a previous calendar quarter’s recycling rates as established by rules. The rates shall be as follows, based on the number of containers sold and the number recovered during a previous quarter:

- (1) If the recovery rate is seventy per cent or less: 1 cent per container; and
- (2) If the recovery rate is greater than seventy per cent: 1.5 cent per container.

**§342G-C Deposit beverage distributors; registration, recordkeeping requirements.** (a) By September 1, 2002, all deposit beverage distributors operating within the State shall register with the department, using forms prescribed by the department, and shall notify the department of any change in address or other information previously submitted. After September 1, 2002, any person who desires to conduct business in the State as a deposit beverage distributor shall register with the department no later than one month prior to the commencement of the business.

(b) All deposit beverage distributors shall maintain records reflecting the manufacture of their beverages in deposit beverage containers as well as the importation and exportation of deposit beverage containers. The records shall be made available, upon request, for inspection by the department; provided that any

proprietary information obtained by the department shall be kept confidential and shall not be disclosed to any other person, except:

- (1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or
- (2) Under an order issued by a court or administrative agency hearings officer.

**§342G-D Deposit into deposit beverage container deposit special fund; use of funds.** (a) There is established in the state treasury the deposit beverage container deposit special fund, into which shall be deposited:

- (1) All revenues generated from the deposit beverage container fee as described under sections 342G-B and 342G-E;
  - (2) All revenues generated from the deposit beverage container deposit as described under sections 342G-J and 342G-E; and
  - (3) All accrued interest from this fund.
- (b) Moneys in the fund shall be used to reimburse refund values and pay handling fees to redemption centers. The department may also use the money to:
- (1) Fund administrative, audit, and compliance activities associated with collection and payment of the deposits and handling fees of the deposit beverage container fee and deposit program;
  - (2) Conduct recycling education and demonstration projects;
  - (3) Promote recyclable market development activities;
  - (4) Support the handling and transportation of the deposit beverage containers to end-markets;
  - (5) Hire personnel to oversee the implementation of the deposit beverage container fee and deposit program, including permitting and enforcement activities; and
  - (6) Fund associated office expenses.

**§342G-E Deposit beverage container inventory report and payment.** (a) Beginning October 1, 2002, payment of the deposit beverage container fee and deposits as described in section 342G-J shall be made monthly based on inventory reports of the deposit beverage distributors. All deposit beverage distributors shall submit to the department documentation in sufficient detail that identifies:

- (1) The number of beverages in deposit beverage containers, by container size and type, manufactured in or imported to the State; and
- (2) The number of these deposit beverage containers, by container size and type, exported and intended for consumption out of the State during the reporting period.

(b) The amount due from deposit beverage distributors shall be the net number of deposit beverage containers imported or manufactured into the State (the total number of containers imported or manufactured less the total number of containers exported for consumption outside the State) multiplied by the sum of the prevailing deposit beverage container fee and the refund value of 5 cents. Payment shall be made by check or money order payable to the "Department of Health, State of Hawaii". All inventory reports and payments shall be made no later than the fifteenth day of the month following the end of the payment period of the previous month.

**§342G-F Contract for administrative services.** The department may contract the services of a third party to administer the deposit beverage container program under this part.

**§342G-G Management and financial audit.** The auditor shall conduct a management and financial audit of the program for fiscal years 2004-2005 and 2005-2006, and for each fiscal year thereafter ending in an even-numbered year. The auditor shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the legislature and the department no later than twenty days prior to the convening of next regular session. The costs incurred by the auditor for the audit shall be reimbursed by the deposit beverage container program special fund. The auditor may contract the audit services of a third party to conduct the audit.

**§342G-H Reserved.**

**§342G-I Rules; commencement.** The department may adopt rules pursuant to chapter 91 as may be necessary for the purposes of this part. Full implementation of the deposit beverage container deposit program shall commence no later than January 1, 2005.

**§342G-J Payment and application of deposits.** (a) By January 1, 2005, every deposit beverage container sold in this State shall have a refund value of 5 cents. Each container shall have the refund value clearly indicated on it as provided in section 342G-L.

(b) The refund value is the amount of the deposit required. Once a refund value has been applied to a deposit beverage container, the deposit on that container may not be changed and shall be paid to the State.

(c) The deposit on each filled deposit beverage container shall be paid by the deposit beverage distributor, who manufactures or imports beverages in deposit beverage containers. Payment and reporting of the deposits shall be in accordance with section 342G-E. The deposits shall be deposited into the deposit beverage container deposit special fund as described in section 342G-D.

(d) Deposit beverage distributors who are required under subsection (c) to pay a deposit shall also pay a deposit beverage container fee and register with the State.

**§342G-K Sales of beverages in deposit beverage containers.** (a) Beginning January 1, 2005, every deposit beverage distributor who pays a deposit shall charge the dealer or consumer a deposit equal to the refund value for each deposit beverage container sold in Hawaii. The deposit charge may appear as a separate line item on the invoice.

(b) Each dealer shall charge the consumer the deposit beverage container deposit at the point of sale of the beverage excluding sales for on-premises consumption. The deposit charge may appear as a separate line item on the invoice.

**§342G-L Deposit beverage container requirements.** (a) Except as provided in subsection (b), every deposit beverage container sold in this State shall clearly indicate the refund value of the container and the word "Hawaii" or the letters "HI". The names or letters representing the names of other states with comparable deposit legislation may also be included in the indication of refund value. Other indications may be required as specified in rules.

(b) Subsection (a) does not apply to any type of refillable glass beverage container which has a brand name permanently marked on it and which has the equivalent of a refund value of at least 5 cents which is paid upon receipt of such container by a dealer or distributor.

**§342G-M Redemption of empty deposit beverage containers.** (a) Except as provided in subsection (b), a dealer shall:

- (1) Operate a redemption center by accepting all types of empty beverage containers with a Hawaii refund value;
- (2) Pay to the redeemer the full refund value for all deposit beverage containers which bear a valid Hawaii refund value; and
- (3) Ensure each deposit beverage container collected is recycled, and forward documentation necessary to support claims for payment as stated in section 342G-S, or rules adopted under this part.

(b) Subsection (a) shall not apply to any dealer:

- (1) Who is located in a high density population area as defined by the director in rules, and within two miles of a certified redemption center that is operated independently from a dealer;
- (2) Who is located in a rural area as defined by rule;
- (3) Who subcontracts with a certified redemption center for operation on the dealer's premises;
- (4) Whose sale of deposit beverage containers are only via vending machines;
- (5) Whose place of business is less than five thousand square feet of interior space;
- (6) Who can demonstrate physical hardship, or financial hardship, or both, based on specific criteria established in rules; or
- (7) Who meet other criteria established by the director.

Notwithstanding paragraphs (1) and (2), the director may allow the placement of redemption centers at greater than prescribed distances to accommodate geographical features while assuring adequate consumer convenience.

(c) All dealers, regardless of the square footage of the dealer's place of business, shall post a clear and conspicuous sign at each public entrance to the dealer's place of business, which specifies the name, address, and hours of operation of the closest redemption center locations.

(d) If there is no redemption center within the two-mile radius of a dealer due to the criteria described in subsection (b), then the respective county and the State shall determine the need for a redemption center in that area. If a redemption center is deemed necessary, then the State, with assistance from the county, shall establish the redemption center with funding from the deposit beverage container deposit special fund.

(e) Businesses that sell deposit beverages for on-premises consumption, such as hotels, bars, and restaurants, shall collect used deposit beverage containers from the consumer; and use a certified redemption center for the collection of containers, or become a certified redemption center.

**§342G-N Redemption centers.** (a) Prior to operation, redemption centers shall be certified by the department.

(b) Applications for certification as a redemption center shall be filed with the department of health on forms prescribed by the department.

(c) The State, at any time, may review the certification of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center and to the dealers served by the redemption center, the State, after it has afforded the redemption center operator a hearing in accordance with chapter 91, may withdraw the certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(d) Redemption centers shall:



- (1) Accept all types of empty deposit beverage containers for which a deposit has been paid;
- (2) Verify that all containers to be redeemed bear a valid Hawaii refund value;
- (3) Pay to the redeemer the full refund value for all beverage containers, except as provided in section 342G-P;
- (4) Crush or destroy all deposit beverage containers that are accepted at the time of redemption;
- (5) Ensure each container collected is recycled through a contractual agreement with an out-of-state recycler or an in-state recycling facility permitted by the department; provided that this paragraph shall not apply if the redemption center is operated by a recycler permitted by the department; and
- (6) Forward the documentation necessary to support claims for payment as stated in section 342G-S.

(e) Redemption centers' redemption areas shall be maintained in full compliance with applicable laws and with the orders and rules of the department, including permitting requirements, if deemed necessary, under chapter 342H.

**§342G-O Reverse vending machine requirements.** Reverse vending machines may be used by redemption centers to satisfy the requirements of section 342G-M; provided that the reverse vending machine shall accept any type of empty deposit beverage container and pay out appropriate refunds via a redeemable voucher for those containers that bear a valid Hawaii refund value. If the reverse vending machine is unable to read the Hawaii refund value, then the department shall specify a delayed date in which the reverse vending machines may be used. The reverse vending machine shall be routinely serviced to ensure proper operation and continuous acceptance of containers and payment of refunds. All deposit beverage containers accepted by a reverse vending machine shall either be crushed or destroyed at the point of redemption.

**§342G-P Refusal of refund value payment for a deposit beverage container.** Redemption centers shall refuse to pay the refund value on any broken, corroded, dismembered, flattened deposit beverage container, or any deposit beverage container which:

- (1) Contains a free flowing liquid;
- (2) Does not properly indicate a refund value; or
- (3) Contains a significant amount of foreign material.

**§342G-Q Handling fees and refund values for certified redemption centers.** (a) The State shall pay to each certified redemption center a handling fee of not less than the prevailing beverage container fee for each deposit beverage container redeemed by a consumer which is transported out-of-state or received by an approved in-state company for an approved end use for recycling or received by a department permitted recycling facility.

(b) Not less than thirty days before paying the handling fees required by this section, the department shall publish a notice statewide in accordance with applicable state law of the recovery rate for the calendar quarter for which the handling fee will be paid. Payments for handling fees shall be made not less than six months after the completion of the calendar quarter to which the payment applies.

(c) The handling fee shall be paid in addition to the refund value of each such empty beverage container. The department may choose to pay the handling fee and refund value on the basis of the total weight of the containers received by material type and the average weight of each container type.

(d) A handling fee and refund value may only be paid once for each container redeemed by a consumer and claimed by a redemption center in accordance with section 342G-S.

**§342G-R Reserved.**

**§342G-S Redemption center reporting.** The State shall pay certified redemption centers handling fees and refund values as described in 342G-Q, based on collection reports submitted by the redemption centers. All redemption centers shall submit to the department, information on forms prescribed by the department. Information shall include at a minimum:

- (1) The amount and type of containers accepted and rejected;
- (2) The amount of refunds paid out;
- (3) The amount and weight of each type of containers transported out-of-state, or to a permitted recycling facility;
- (4) Copies of out-of-state transport and weight receipts, or acceptance receipts from permitted recycling facilities. If the redemption center and the recycling facility are the same entity, copies of out-of-state transport and weight receipts, or documentation of end use accepted by the department, shall also be included.

The requests for payment shall be no more frequent than two times per month. Beginning January 1, 2005, each center shall report the previous quarter's information no later than thirty days after the end of that quarter so that the handling rate can be calculated. Failure to timely submit the report shall postpone payment for those containers until they are timely submitted for a subsequent quarter.

**§342G-T Recycling facility reporting.** Recycling facilities, in addition to any requirements under chapter 342H, shall prepare or maintain the documents involving empty beverage containers, as required by the department.

**§342G-U Audit authority.** The records of the deposit beverage distributor, dealer, redemption center, and recycling facility shall be made available, upon request, for inspection by the department, a duly authorized agent of the department, or the auditor. Any proprietary information obtained by them shall be kept confidential and shall not be disclosed to any other person, except:

- (1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or
- (2) Under an order issued by a court or administrative agency hearings officer.

**§342G-V Advisory committee.** The department shall convene an advisory committee to assist it in developing any rules needed to implement this chapter. The department shall select members of the committee so as to obtain input on the state level as well as assess the impact on each individual county, consumers, recyclers, and the beverage industry. Members of the committee shall be appointed by the director and shall serve at the director's pleasure. A simple majority of the committee members shall constitute a quorum for the purposes of recommending rules and providing input to the director."

SECTION 3. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§237- Additional exemptions.** In addition to the amounts exempt under section 237-24, this chapter shall not apply to amounts received as a beverage container deposit collected under chapter 342G, part .”

SECTION 4. Section 342G-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Deposit beverage” means beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks regardless of dairy-derived product content, soda, or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container.

The term “deposit beverage” excludes the following:

- (1) A liquid which is:
  - (A) A syrup;
  - (B) In a concentrated form; or
  - (C) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;
- (2) A liquid which is ingested in very small quantities and which is consumed for medicinal purposes only;
- (3) A liquid which is designed and consumed only as a nutritional supplement as defined in the Dietary Supplement Health and Education Act of 1994 (P.L. 103-417) and not as a beverage;
- (4) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;
- (5) Products designed to be consumed in a frozen state;
- (6) Instant drink powders;
- (7) Seafood, meat, or vegetable broths, or soups, but not juices; and
- (8) Milk and all other dairy-derived products, except tea and coffee drinks with trace amounts of these products.”

SECTION 5. Section 342G-81, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Deposit glass beverage container” means:

- (1) The individual, separate, sealed, glass container used for containing, at the time of import, sixty-four ounces or less of a beverage; or
- (2) The empty, individual, separate glass container that will be filled with sixty-four ounces or less of a beverage and sealed in this State, so that these glass beverage containers will be subject to parts A and B.”

SECTION 6. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.**

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;

- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees' retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs' special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649;
- (27) High technology special fund under section 206M-15.5;
- (28) Public schools special fees and charges fund under section 302A-1130(f);
- (29) Cigarette tax stamp enforcement special fund established by section 28-14;
- (30) Cigarette tax stamp administrative special fund established by section 245-41.5; [and]
- (31) Tobacco enforcement special fund established by section 28-15;
- (32) Deposit beverage container deposit special fund under section 342G-D;  
and
- (33) Glass advance disposal fee special fund established by section 342G-82.

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 7. Section 342G-71, Hawaii Revised Statutes, is amended to read as follows:

“**[§342G-71] Penalties.** Any person who violates any provision of this chapter or any rule adopted pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a

separate offense. Any action taken to impose or collect the penalty provided for in this section shall be [considered a civil action.] made through administrative, civil, or criminal actions."

SECTION 8. Section 342G-72, Hawaii Revised Statutes, is amended to read as follows:

**"[§342G-72] Enforcement.** [The department of health shall enforce this chapter-] (a) If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a certification or permit issued pursuant to this chapter, the director may do any one or more of the following:

- (1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;
- (2) Issue an order assessing an administrative penalty for any past or current violation;
- (3) Require compliance immediately or within a specified time; and
- (4) Commence a civil action in circuit court in which the violation occurred or where the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a certification or permit issued under this chapter, and shall state with reasonable specificity the nature of the violation.

(c) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall:

- (1) Affirm or modify any penalties imposed or shall modify or affirm the order previously issued; or
- (2) Issue an appropriate order or orders for the prevention, abatement, or control of the violation involved, or for the taking of such other corrective action as may be appropriate.

If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.

(e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the administrative penalty which shall be a government realization. In any proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties."

SECTION 9. Section 342G-82, Hawaii Revised Statutes, is amended to read as follows:

**“[§342G-82] Advance disposal fee.** (a) Every glass container importer shall pay to the department an advance disposal fee. The fee shall be imposed only once on the same glass container and shall not be assessed on drinking glasses, cups, bowls, plates, ashtrays, and similar tempered glass containers. For the period beginning September 1, 1994, ~~[to September 1, 1996,]~~ the fee shall be one and one-half cents per glass container. ~~[Thereafter, the fee shall be set by the legislature at a rate the legislature determines will permit funding of county glass recovery programs as required to achieve the following glass recovery program goals:~~

- ~~(1) Twenty-five per cent by the end of 1996;~~
- ~~(2) Fifty per cent by the end of 1998; and~~
- ~~(3) By the end of 2000 and thereafter, the maximum amount practicable considering the economic and environmental benefits to be realized.~~

~~(b) In January 1995, the department, with assistance from the county solid waste divisions, shall evaluate the amount of glass recovered during the first fifteen months of the program and recommend to the legislature any modification in the fee structure to meet county glass recovery program funding requirements. Thereafter, prior to the convening of the legislative session in each subsequent even-numbered year, the department of health, in coordination with the counties, shall report to the legislature on the effectiveness of the program and make appropriate recommendations for modification of the fee.] Beginning October 1, 2004, the glass advance disposal fee shall only apply to glass containers that are not glass deposit beverage containers.~~

~~[(e)] (b)~~ The legislature shall have exclusive authority over all matters subject to this chapter.

~~[(d)] (c)~~ No county shall impose or collect any assessment or fee on glass containers for the same or similar purpose that is ~~[-]the[]~~ subject of this chapter."

SECTION 10. Section 342G-83, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

**“(b) All glass container importers shall maintain records reflecting the manufacture of their glass containers as well as the importation and exportation of products packaged in glass. The records shall identify the type (glass deposit beverage container or non-deposit beverage glass container) and quantity of each type of glass container. The records shall be made available, upon request, for inspection by the department; provided that any proprietary information obtained by the department shall be kept confidential, and shall not be disclosed to any other person except:**

- (1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or
- (2) Under an order issued by a court or administrative agency hearing officer."

SECTION 11. Section 342G-84, Hawaii Revised Statutes, is amended to read as follows:

**“§342G-84 Deposit into environmental management special fund; distribution to counties.** (a) Revenues generated from the advance disposal fee shall be deposited into a special account in the environmental management fund. Moneys from the special account shall be used to fund county glass recovery programs established in accordance with the requirements under section 342G-86; provided that no moneys shall be made available to a county unless the county has first submitted its formally adopted integrated solid waste management plan to the department for review. In the event of any surplus in the special account, the department shall recommend a reduction in the fee as deemed necessary.

(b) The department shall distribute the moneys contained in the special account to the counties in proportion to the amount of glass imported into each county based on the county’s de facto population. The distribution shall be in the form of direct contracts with the department as permitted under chapters 103 and 103D or transfer of funds from the department.

(c) No more than ten per cent, in the aggregate, of the revenue collected in any one year may be used by the department for administrative and educational purposes and to promote glass recovery, recycling, and reuse in Hawaii through research and demonstration projects.

(d) All moneys distributed to the counties under subsection (b), and not used by the counties as specified in section 342G-86, shall be returned to the State for deposit into the environmental management special fund at the end of each annual contract period.”

SECTION 12. Section 342G-85, Hawaii Revised Statutes, is amended to read as follows:

**“§342G-85 Container inventory report and payment.** (a) Payment of the advance glass disposal fee shall be made quarterly based on inventory reports of the glass container importers, except for those importers subject to subsection (c) or (d). All glass container importers shall submit to the department documentation in sufficient detail that identifies the number of glass deposit beverage and glass non-deposit beverage containers manufactured or imported to the State and sold or distributed, by manufacturer or distributor, during the calendar year.

(b) ~~[The]~~ Until September 30, 2004, the amount due from glass container importers less glass containers exported for the calendar year shall be the sum equal to the number of glass containers provided in subsection (a) multiplied by the advance disposal fee [of 1.5 cents.] specified in section 342G-82. Beginning October 1, 2004, the amount due from glass container importers shall be the sum equal to the number of non-deposit beverage glass containers provided in subsection (a), less non-deposit beverage glass containers exported, and multiplied by the advance disposal fee. Payment shall be made by check or money order payable to the “Department of Health, State of Hawaii”. All subsequent inventory reports and payments shall be made not later than the fifteenth day of the month following the end of the previous calendar quarter, except for those importers subject to subsection (d).

(c) [A] Until September 30, 2004, a glass container importer who imports fewer than five thousand glass containers within a one-year period shall be exempt from payment of the fee. Any empty, imported glass container designed to hold not more than two and one-half fluid ounces of a product meant for human consumption shall be exempt from the fee. Beginning October 1, 2004, a glass container importer who imports or manufactures in the State fewer than five thousand non-deposit

beverage glass containers within a one-year period shall be exempt from payment of the fee.

(d) [A] Until September 30, 2004, a glass container importer who imports five thousand or more glass containers, but less than or equal to one hundred thousand glass containers, shall be permitted to provide a report and payment of the fee annually, rather than quarterly. Beginning October 1, 2004, a glass container importer who imports or manufactures in the State five thousand or more non-deposit beverage glass containers, but less than or equal to one hundred thousand non-deposit beverage glass containers, shall be permitted to provide a report and payment of the fee annually, rather than quarterly.”

SECTION 13. Section 342G-86,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

“(a) All county glass recovery programs shall include:

- (1) Some form of glass incentive or “buy back” program providing a means of encouraging participation by the public or private collectors; and
- (2) The paving [during each of the first two years] of the equivalent of one mile of two lane asphalt roadway as part of a research and demonstration program utilizing glassphalt[-] or glass within any other portion of the pavement section; or any other demonstration project as approved by the department.”

SECTION 14. Section 342G-88, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 342G-89, Hawaii Revised Statutes, is repealed.

SECTION 16. The department shall provide quarterly reports on the deposit beverage container program to the legislature and the governor for the period beginning October 1, 2002 and ending December 31, 2004. The reports shall contain but not be limited to:

- (1) Performance indicators;
- (2) Measures of effectiveness;
- (3) Organization charts; and
- (4) Position descriptions of every type of position created and actual salaries paid to each employee.

The reports shall include recommended legislation for statutory changes.

If the administration of the program is contracted to a third party pursuant to section 342G-F, a copy of the contract shall be appended to the next applicable report, and the contractor shall abide by these reporting requirements as well. The contractor’s pay scales shall be comparable to equivalent positions in civil service.

SECTION 17. All positions established for the program established by section 2 of this Act shall be temporary positions. No permanent position shall be established for the program and no temporary position shall be converted to a permanent position until explicitly authorized by the legislature.

SECTION 18. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>



## ACT 177

SECTION 20. This Act shall take effect on July 1, 2002; provided that amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 25, 2002.)

### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 177

H.B. NO. 1800

A Bill for an Act Relating to the State Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 2002.

SECTION 2. This Act amends Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, and other appropriations and authorizations effective during fiscal biennium 2001-2003.

SECTION 3. Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, is amended by amending section 3 to read as follows:

“SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2001, and ending June 30, 2003. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each year, except as provided elsewhere in this Act, or as provided by general law.

### PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR	M O	FISCAL YEAR	M O
				2001-02	F	2002-03	F
A. ECONOMIC DEVELOPMENT							
1. BED101 - BUSINESS DEVELOPMENT & MARKETING							
				15.00*		15.00*	
	OPERATING		BED	1,746,007A		1,655,511A	
2. BED102 - BUSINESS SERVICES							
				12.00*		12.00*	
	OPERATING		BED	1,342,032A		1,315,413A	
			BED	196,869B		196,869B	
				3.00*		3.00*	
			BED	5,121,666W		5,116,265W	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	BED			7,300,000C	
3.	BED107	FOREIGN TRADE ZONE					
		OPERATING	BED	21.00*		21.00*	
		INVESTMENT CAPITAL	BED	1,973,377B		1,950,827B	
						3,150,000C	
4.	BED120	ENERGY AND NATURAL RESOURCES					
		OPERATING	BED	12.00*		12.00*	
			BED	1,394,333A		1,092,346A	
			BED	400,000B		200,000B	
			BED	3,000,000N		3,200,000N	
			BED	100,000W		100,000W	
5.	BED142	GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT					
		OPERATING	BED	32.00*		30.00*	
		INVESTMENT CAPITAL	BED	1,931,253A		1,831,546A	
			BED			1,000,000B	
			BED			1,000,000C	
						0 <sup>1</sup>	
6.	BED113	TOURISM					
		OPERATING	BED	7.00*		5.00*	
				100,782,012B		100,758,743B	
						55,976,731 <sup>1</sup>	
7.	AGR101	FINANCIAL ASSISTANCE FOR AGRICULTURE					
		OPERATING	AGR	10.00*		10.00*	
			AGR	908,354B		880,954B	
				5,000,000W		5,000,000W	
8.	AGR122	PLANT PEST AND DISEASE CONTROL					
		OPERATING	AGR	94.00*		94.00*	
			AGR	3,984,634A		3,927,684A	
			AGR	300,966N		300,966N	
			AGR	363,600T		363,600T	
				1.00*		1.00*	
			AGR	171,165U		171,165U	
			AGR	32,330W		58,360W	
		INVESTMENT CAPITAL	AGS	7,054,000C			
9.	AGR131	RABIES QUARANTINE					
		OPERATING	AGR	45.00*		45.00*	
		INVESTMENT CAPITAL	AGS	2,817,726B		2,792,621B	
						280,000C	
10.	AGR132	ANIMAL DISEASE CONTROL					
		OPERATING	AGR	23.50*		23.50*	
			AGR	1,110,869A		1,076,770A	
				282,481U		282,481U	
11.	LNR172	FORESTRY - PRODUCTS DEVELOPMENT					
		OPERATING	LNR	19.00*		19.00*	
			LNR	660,330A		648,589A	
				500,000B		750,000B	
				3.00*		3.00*	
			LNR	413,617N		413,617N	
12.	AGR151	QUALITY AND PRICE ASSURANCE					
				31.00*		29.00*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
	OPERATING		AGR	1,320,155A		1,253,533A	
				2.00*		2.00*	
			AGR	222,400B		222,400B	
			AGR	34,424N		52,424N	
			AGR	300,000T		300,000T	
			AGR	581,417W		551,846W	
13.	AGR171 - AGRICULTURAL DEVELOPMENT & MARKETING						
				20.00*		19.00*	
	OPERATING		AGR	1,286,391A		1,235,160A	
			AGR	75,000N		75,000N	
14.	AGR141 - AGRICULTURAL RESOURCE MANAGEMENT						
				2.00*		2.00*	
	OPERATING		AGR	261,684A		261,684A	
				2.50*		2.50*	
			AGR	372,807B		341,941B	
				18.50*		13.50*	
			AGR	1,346,993W		1,170,386W	
	INVESTMENT CAPITAL		AGR	5,000,000C		<del>47,240,000C</del>	
						11,240,000 <sup>1</sup>	
			AGR			300,000N	
15.	AGR161 - AGRIBUSINESS DEVELOPMENT & RESEARCH						
				1.00*		1.00*	
	OPERATING		AGR	788,447A		779,335A	
			AGR	971,826W		3,296,826W	
16.	AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE						
				29.00*		27.00*	
	OPERATING		AGR	1,385,514A		1,304,691A	
	INVESTMENT CAPITAL		AGS	961,000C		1,141,000C	
17.	LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE						
				9.00*		9.00*	
	OPERATING		LNR	708,620A		689,233A	
			LNR	100,000B		250,000B	
			LNR	308,210N		308,210N	
	INVESTMENT CAPITAL		LNR	258,000C			
18.	AGR153 - AQUACULTURE DEVELOPMENT PROGRAM						
				8.00*		8.00*	
	OPERATING		AGR	473,182A		435,145A	
			AGR	30,000B		30,000B	
			AGR	74,962N		74,962N	
19.	BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION						
				1.50*		1.50*	
	OPERATING		BED	1,349,177A		1,276,116A	
				1.50*		1.50*	
			BED	1,961,442B		1,860,865B	
			BED	2,000,000N		2,000,000N	
			BED	1,500,000W		1,500,000W	
	INVESTMENT CAPITAL		BED	114,000C		343,000C	
			BED	8,405,000E			
20.	BED145 - HAWAII STRATEGIC DEVELOPMENT CORP.						
	OPERATING		BED	4,104,473W		4,104,473W	
21.	BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY						

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	BED	959,447A		705,036A	
			BED	1,981,000B		2,479,065B	
			BED	6,519,648N		6,519,648N	
		INVESTMENT CAPITAL	BED	1,169,000C		1,361,000C	
			BED	2,000,000N		1,000,000N	
22.		LNR141 - WATER AND LAND DEVELOPMENT					
				3.00*		3.00*	
		OPERATING	LNR	269,859A		266,214A	
			LNR	110,000W		110,000W	
		INVESTMENT CAPITAL	LNR	771,000C		6,025,000C	
23.		BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY					
				2.00*		2.00*	
		OPERATING	BED	122,301A		122,301A	
			BED	3,300,000B		3,300,000B	
		INVESTMENT CAPITAL	BED	13,000,000C		19,150,000C	
24.		BED151 - ALOHA TOWER DEVELOPMENT CORPORATION					
				1.00*		1.00*	
		OPERATING	BED	1,503,552B		1,503,552B	
25.		BED152 - BARBERS POINT NAVAL AIR STATION					
		OPERATING	BED			100,000W	

## B. EMPLOYMENT

## 1. LBR111 - PLACEMENT SERVICES

				4.30*		4.30*	
		OPERATING	LBR	285,967A		285,967A	
			LBR	9,716,267B		9,716,267B	
				119.20*		119.20*	
			LBR	47,744,278N		47,744,278N	
			LBR	1,228,307U		1,228,307U	

## 2. LBR135 - WORKFORCE DEVELOPMENT COUNCIL

				3.00*		3.00*	
		OPERATING	LBR	152,950A		152,950A	
			LBR	413,110N		413,110N	

## 3. LBR143 - OCCUPATIONAL SAFETY &amp; HEALTH

				26.00*		25.00*	
		OPERATING	LBR	1,024,518A		994,359A	
			LBR	504,161B		504,161B	
				26.00*		25.00*	
			LBR	1,690,856N		1,657,406N	
				18.00*		18.00*	
			LBR	1,232,325W		1,214,852W	

## 4. LBR152 - WAGE STANDARDS &amp; FAIR EMPLOYMENT PRACTICES

				28.35*		27.35*	
		OPERATING	LBR	1,068,815A		1,033,668A	
			LBR	53,131U		53,131U	

## 5. LBR153 - CIVIL RIGHTS COMMISSION

				21.50*		21.50*	
		OPERATING	LBR	1,002,794A		995,834A	
				4.00*		4.00*	
			LBR	420,208N		420,208N	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
6.	LBR161 - PUBLIC AND PRIVATE EMPLOYMENT						
	OPERATING		LBR	2.00*		2.00*	
				509,667A		463,863A	
7.	LBR171 - UNEMPLOYMENT COMPENSATION						
	OPERATING		LBR	166,538,974B		166,538,974B	
				231.90*		231.90*	
			LBR	13,240,597N		13,240,597N	
8.	LBR183 - DISABILITY COMPENSATION						
	OPERATING		LBR	116.00*		112.00*	
				4,297,493A		4,245,870A	
				3.00*		4.00*	
			LBR	20,675,713B		23,675,713B	
9.	HMS802 - VOCATIONAL REHABILITATION						
	OPERATING		HMS	26.17*		26.57*	
				3,832,490A		3,814,906A	
				90.33*		93.93*	
			HMS	9,644,265N		9,847,544N	
			HMS	1,330,200W		1,330,200W	
10.	LBR901 - DLIR-DATA GATHERING, RESEARCH AND ANALYSIS						
	OPERATING		LBR	8.88*		8.88*	
				638,322A		638,322A	
				29.12*		29.12*	
			LBR	2,170,983N		2,170,983N	
11.	LBR902 - GENERAL ADMINISTRATION						
	OPERATING		LBR	29.12*		25.66*	
				1,398,463A		1,357,161A	
				37.22*		36.68*	
			LBR	2,712,315N		2,691,206N	
12.	LBR903 - OFFICE OF COMMUNITY SERVICES						
	OPERATING		LBR	5.00*		5.00*	
				5,729,254A		5,307,501A	
				3.00*		3.00*	
	INVESTMENT CAPITAL		LBR	5,821,458N		5,821,458N	
			LBR			4,500,000C	
						3,500,000 <sup>1</sup>	
13.	LBR812 - LABOR & INDUSTRIAL RELATIONS APPEALS BOARD						
	OPERATING		LBR	12.00*		12.00*	
				627,529A		627,190A	

## C. TRANSPORTATION FACILITIES

## 1. TRN102 - HONOLULU INTERNATIONAL AIRPORT

OPERATING	TRN	646.75*	648.75*
	TRN	74,339,990B	85,787,136B
INVESTMENT CAPITAL	TRN	3,725,000N	3,725,000N
	TRN	12,950,000B	53,892,000B
	TRN	4,050,000N	43,580,000N

## 2. TRN104 - GENERAL AVIATION

OPERATING	TRN	30.00*	30.00*
	TRN	4,166,937B	4,412,668B
INVESTMENT CAPITAL	TRN	1,500,000B	360,000B

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN	2,830,000N		840,000N	
3.	TRN111	HILO INTERNATIONAL AIRPORT					
		OPERATING	TRN	79.00*		80.00*	
		INVESTMENT CAPITAL	TRN	9,171,330B		8,478,925B	
			TRN	15,840,000B		7,315,000B	
			TRN	2,000,000N		5,255,000N	
4.	TRN114	KONA INTERNATIONAL AIRPORT AT KE'AHOLE					
		OPERATING	TRN	93.00*		94.00*	
		INVESTMENT CAPITAL	TRN	9,249,017B		9,824,804B	
			TRN	2,664,000B		8,260,000B	
			TRN	830,000N		13,365,000N	
5.	TRN116	WAIMEA-KOHALA AIRPORT					
		OPERATING	TRN	2.00*		2.00*	
		INVESTMENT CAPITAL	TRN	243,998B		152,948B	
			TRN	200,000B			
6.	TRN118	UPOLU AIRPORT					
		OPERATING	TRN	43,539B		28,389B	
7.	TRN131	KAHULUI AIRPORT					
		OPERATING	TRN	171.00*		172.00*	
			TRN	15,715,433B		17,747,884B	
		INVESTMENT CAPITAL	TRN			1,125,000N	
			TRN	1,850,000B		20,875,000B	
			TRN			18,875,000N	
8.	TRN133	HANA AIRPORT					
		OPERATING	TRN	2.00*		2.00*	
			TRN	120,472B		198,028B	
9.	TRN135	KAPALUA AIRPORT					
		OPERATING	TRN	6.00*		6.00*	
			TRN	957,254B		1,072,194B	
10.	TRN141	MOLOKAI AIRPORT					
		OPERATING	TRN	15.00*		15.00*	
		INVESTMENT CAPITAL	TRN	1,458,569B		2,073,893B	
			TRN			80,000B	
			TRN			180,000N	
11.	TRN143	KALAUPAPA AIRPORT					
		OPERATING	TRN	1.00*		1.00*	
			TRN	198,144B		198,144B	
12.	TRN151	LANAI AIRPORT					
		OPERATING	TRN	10.00*		10.00*	
		INVESTMENT CAPITAL	TRN	1,867,668B		1,365,968B	
			TRN	150,000B		580,000B	
			TRN	3,600,000N		180,000N	
			TRN	1,000,000R			
13.	TRN161	LIHUE AIRPORT					
		OPERATING	TRN	107.00*		108.00*	
		INVESTMENT CAPITAL	TRN	11,219,339B		12,050,398B	
			TRN	9,450,000B		12,980,000B	
			TRN	6,500,000N		3,150,000N	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
14.	TRN163	PORT ALLEN AIRPORT					
		OPERATING	TRN	1,860B		1,860B	
		INVESTMENT CAPITAL	TRN	250,000B		1,000,000B	
15.	TRN195	AIRPORTS ADMINISTRATION					
				115.00*		117.00*	
		OPERATING	TRN	112,241,478B		107,178,406B	
		INVESTMENT CAPITAL	TRN	10,450,000B		16,900,000B	
			TRN	100,000N		100,000N	
16.	TRN301	HONOLULU HARBOR					
				123.00*		123.00*	
		OPERATING	TRN	11,925,437B		11,774,147B	
		INVESTMENT CAPITAL	TRN	2,475,000B		4,400,000B	
			TRN	51,500,000E		2,200,000E	
17.	TRN303	KALAELOA BARBERS POINT HARBOR					
				3.00*		3.00*	
		OPERATING	TRN	464,122B		464,122B	
		INVESTMENT CAPITAL	TRN	400,000B		4,900,000B	
18.	TRN305	KEWALO BASIN					
		OPERATING	TRN	2.00*		2.00*	
				888,328B		866,580B	
19.	TRN311	HILO HARBOR					
				11.00*		12.00*	
		OPERATING	TRN	1,315,018B		1,583,478B	
		INVESTMENT CAPITAL	TRN	350,000B		2,000,000B	
			TRN	3,000,000E			
20.	TRN313	KAWAIHAE HARBOR					
				4.00*		4.00*	
		OPERATING	TRN	554,843B		531,932B	
		INVESTMENT CAPITAL	TRN	600,000B			
21.	TRN331	KAHULUI HARBOR					
				15.00*		16.00*	
		OPERATING	TRN	1,611,322B		1,893,126B	
		INVESTMENT CAPITAL	TRN	450,000B		1,600,000B	
			TRN	2,500,000E			
22.	TRN341	KAUNAKAKAI HARBOR					
				1.00*		1.00*	
		OPERATING	TRN	282,336B		302,336B	
23.	TRN361	NAWILIWILI HARBOR					
				14.00*		15.00*	
		OPERATING	TRN	1,547,043B		1,579,168B	
		INVESTMENT CAPITAL	TRN	870,000B		1,000,000B	
			TRN	5,800,000E			
24.	TRN363	PORT ALLEN HARBOR					
		OPERATING	TRN	1.00*		1.00*	
				313,712B		349,712B	
25.	TRN351	KAUMALAPAU HARBOR					
26.	TRN395	HARBORS ADMINISTRATION					
				61.00*		63.00*	

## PROGRAM APPROPRIATIONS

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				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	TRN	38,652,182B		35,636,299B	
		INVESTMENT CAPITAL	TRN	4,100,000B		7,675,000B	
			TRN			10,000,000N	
27.	TRN501	OAHU HIGHWAYS					
				264.00*		264.00*	
		OPERATING	TRN	43,968,549B		43,300,947B	
		INVESTMENT CAPITAL	TRN	22,370,000E		22,420,000E	
			TRN	20,440,000N		17,945,000N	
			TRN			100,000X	
28.	TRN511	HAWAII HIGHWAYS					
				126.00*		126.00*	
		OPERATING	TRN	20,024,067B		18,449,055B	
		INVESTMENT CAPITAL	TRN	2,500,000B			
			TRN	6,800,000E		3,200,000E	
			TRN	15,150,000N		2,890,000N	
29.	TRN531	MAUI HIGHWAYS					
				79.00*		76.50*	
		OPERATING	TRN	13,544,792B		14,584,858B	
		INVESTMENT CAPITAL	TRN	500,000B			
			TRN	9,200,000E		62,250,000E	
			TRN	3,200,000N		24,400,000N	
			TRN	1,000,000S			
30.	TRN541	MOLOKAI HIGHWAYS					
				12.00*		12.00*	
		OPERATING	TRN	3,328,468B		3,240,376B	
		INVESTMENT CAPITAL	TRN	3,500,000E		135,000E	
			TRN			530,000N	
31.	TRN551	LANAI HIGHWAYS					
				4.00*		4.00*	
		OPERATING	TRN	825,231B		766,500B	
32.	TRN561	KAUAI HIGHWAYS					
				51.00*		51.00*	
		OPERATING	TRN	9,433,545B		9,773,222B	
		INVESTMENT CAPITAL	TRN	750,000E		11,815,000E	
			TRN			8,000,000N	
33.	TRN595	HIGHWAYS ADMINISTRATION					
				79.00*		80.00*	
		OPERATING	TRN	65,884,719B		71,584,513B	
			TRN	2,330,000N		8,970,000N	
		INVESTMENT CAPITAL	TRN	21,600,000E		19,125,000E	
			TRN	18,800,000N		16,000,000N	
34.	TRN597	HIGHWAY SAFETY					
				36.00*		36.00*	
		OPERATING	TRN	5,587,437B		5,552,922B	
				3.00*		3.00*	
			TRN	958,946N		958,946N	
35.	TRN995	GENERAL ADMINISTRATION					
				96.00*		94.00*	
		OPERATING	TRN	11,796,449B		11,729,076B	
			TRN	3,397,054N		1,900,000N	



PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN	112,500R		112,500R	
<b>D. ENVIRONMENTAL PROTECTION</b>							
1.	HTH840 - ENVIRONMENTAL MANAGEMENT						
	OPERATING		HTH	56.00*		56.00*	
			HTH	2,774,081A		2,760,540A	
			HTH	50.20*		50.20*	
			HTH	8,022,268B		8,007,623B	
			HTH	41.40*		44.40*	
			HTH	6,030,754N		6,030,754N	
			HTH	52.40*		52.40*	
	INVESTMENT CAPITAL		HTH	96,960,078W		96,904,621W	
			HTH	3,645,000C		3,645,000C	
			HTH	18,226,000N		18,226,000N	
2.	AGR846 - PESTICIDES						
	OPERATING		AGR	16.00*		16.00*	
			AGR	642,626A		620,478A	
			AGR	350,000N		350,000N	
			AGR	4.00*		4.00*	
			AGR	650,751W		650,751W	
3.	LNR401 - AQUATIC RESOURCES						
	OPERATING		LNR	27.00*		27.00*	
			LNR	2,153,565A		2,121,835A	
			LNR	1.00*		1.00*	
			LNR	1,164,717N		1,164,717N	
4.	LNR402 - FORESTS AND WILDLIFE RESOURCES						
	OPERATING		LNR	54.50*		56.00*	
			LNR	2,730,341A		2,900,563A	
			LNR	714,741B		1,017,735B	
			LNR	6.50*		7.00*	
	INVESTMENT CAPITAL		LNR	1,372,834N		5,082,834N	
			LNR	65,000C		116,000C	
5.	LNR404 - WATER RESOURCES						
	OPERATING		LNR	19.00*		19.00*	
			LNR	1,590,880A		1,468,753A	
			LNR			3.00*	
	INVESTMENT CAPITAL		LNR	150,000B		266,109B	
			LNR			1,754,000C	
6.	LNR405 - CONSERVATION & RESOURCES ENFORCEMENT						
	OPERATING		LNR	97.50*		97.50*	
			LNR	4,658,091A		4,558,249A	
			LNR	18.00*		18.00*	
			LNR	1,595,524B		1,240,249B	
			LNR	2.50*		2.50*	
			LNR	637,931N		637,931N	
			LNR	1.00*		1.00*	
			LNR	11,660W		8,229W	
7.	LNR407 - NATURAL AREA RESERVES & MANAGEMENT						
	OPERATING		LNR	27.00*		27.00*	
			LNR	1,178,590A		1,152,380A	
			LNR	1,800,000B		3,300,000B	
8.	HTH850 - POLICY DVLPMENT, COORD & ANLYS FOR NAT P ENVR						

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	HTH	5.00*		5.00*	
				240,046A		240,046A	
9.	LNR906	LNR-NATURAL PHYSICAL ENVIRONMENT					
		OPERATING	LNR	34.00*		32.00*	
			LNR	1,669,455A		1,637,560A	
			LNR	139,397B		162,289B	
		INVESTMENT CAPITAL	LNR	11,860,000C		2,260,000C	
10.	HTH849	ENVIRONMENTAL HEALTH ADMINISTRATION					
		OPERATING	HTH	15.50*		13.50*	
				705,108A		636,745A	
				18.50*		18.50*	
			HTH	1,598,532N		1,598,532N	
				10.00*		10.00*	
			HTH	2,871,616W		2,848,450W	
<b>E. HEALTH</b>							
1.	HTH101	TUBERCULOSIS CONTROL					
		OPERATING	HTH	33.00*		33.00*	
				2,186,073A		2,193,494A	
				2.00*		2.00*	
			HTH	1,210,938N		1,210,938N	
		INVESTMENT CAPITAL	AGS	425,000C			
2.	HTH111	HANSEN'S DISEASE SERVICES					
		OPERATING	HTH	71.00*		71.00*	
				4,326,362A		4,296,477A	
				3.00*		3.00*	
			HTH	695,669N		695,669N	
3.	HTH121	STD/AIDS PREVENTION SERVICES					
		OPERATING	HTH	15.00*		15.00*	
				5,343,236A		5,343,236A	
				4.50*		4.50*	
			HTH	4,672,303N		4,672,303N	
4.	HTH131	EPIDEMIOLOGY SERVICES					
		OPERATING	HTH	19.00*		19.00*	
				1,243,245A		1,240,232A	
				22.00*		22.00*	
			HTH	4,200,000N		4,200,000N	
5.	HTH141	DENTAL DISEASES					
		OPERATING	HTH	25.60*		25.60*	
				1,614,436A		1,557,067A	
6.	HTH180	CHRONIC DISEASE MANAGEMENT AND CONTROL					
		OPERATING	HTH	20.80*		20.80*	
			HTH	1,063,117A		1,023,449A	
			HTH			18,000B	
			HTH	2,642,740N		2,642,760N	
7.	HTH165	WOMEN, INFANTS & CHILDREN (WIC) SERVICES					
		OPERATING	HTH	116.50*		116.50*	
				33,677,385N		33,677,385N	
8.	HTH501	DEVELOPMENTAL DISABILITIES					
				263.75*		261.75*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	HTH	40,188,385A		35,531,322A	
		INVESTMENT CAPITAL	AGS	275,000C			
9.	HTH530	- CHILDREN WITH SPECIAL HEALTH NEEDS SERVICES					
				105.00*		105.25*	
		OPERATING	HTH	8,467,205A		8,457,960A	
				3.00*		3.00*	
			HTH	615,059B		615,059B	
				34.00*		34.00*	
			HTH	3,651,427N		3,570,392N	
10.	HTH540	- SCHOOL HEALTH SERVICES					
11.	HTH550	- MATERNAL & CHILD HEALTH SERVICES					
				20.00*		20.00*	
		OPERATING	HTH	23,727,771A		27,264,146A	
			HTH	300,000B		300,000B	
				28.00*		28.00*	
			HTH	6,048,724N		6,317,962N	
				1.00*		1.00*	
			HTH	250,000U		250,000U	
12.	HTH570	- COMMUNITY HEALTH NURSING					
				442.00*		442.50*	
		OPERATING	HTH	13,662,502A		13,526,109A	
13.	HTH730	- EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM					
				13.00*		13.00*	
		OPERATING	HTH	36,513,275A		37,967,924A	
				3.00*		3.00*	
		INVESTMENT CAPITAL	AGS	552,286N		552,286N	
						302,000C	
14.	HTH595	- HEALTH RESOURCES ADMINISTRATION					
				47.00*		45.00*	
		OPERATING	HTH	5,613,031A		5,008,588A	
				3.00*		3.00*	
			HTH	75,999,462B		55,021,102B	
				6.00*		6.00*	
			HTH	774,977N		874,977N	
			HTH	4,500,000T		4,500,000T	
		INVESTMENT CAPITAL	HTH	6,880,000C		1,370,000C	
				1,880,000 <sup>1</sup>			
15.	HTH210	- HAWAII HEALTH SYSTEMS CORPORATION					
		OPERATING	HTH	2,000,000A		14,000,000A	
				2,836.25*		2,836.25*	
			HTH	246,519,978B		246,637,937B	
		INVESTMENT CAPITAL	HTH	6,934,000C		44,327,000C	
16.	SUB601	- PRIVATE HOSPITALS & MEDICAL SERVICES					
		OPERATING	SUB	2,535,000A			
17.	HTH420	- ADULT MENTAL HEALTH - OUTPATIENT					
				223.00*		226.00*	
		OPERATING	HTH	44,012,756A		47,322,148A	
			HTH	2,507,430B		6,055,753B	
			HTH	1,178,900N		1,178,900N	
		INVESTMENT CAPITAL	HTH			500,000C	

## PROGRAM APPROPRIATIONS

				APPROPRIATIONS			
ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
0 <sup>1</sup>							
18.	HTH430 - ADULT MENTAL HEALTH - INPATIENT						
	OPERATING		HTH	561.50*		561.50*	
	INVESTMENT CAPITAL		AGS	28,880,422A		28,840,180A	
						660,000C	
19.	HTH440 - ALCOHOL & DRUG ABUSE						
	OPERATING		HTH	7.00*		7.00*	
			HTH	8,512,538A		6,309,195A	
			HTH	150,000B		150,000B	
				2.00*		2.00*	
			HTH	9,366,345N		9,366,345N	
20.	HTH460 - CHILD & ADOLESCENT MENTAL HEALTH						
	OPERATING		HTH	197.00*		197.00*	
			HTH	89,904,235A		89,679,002A	
			HTH	7,477,406B		6,754,994B	
			HTH	616,083N		693,203N	
21.	HTH495 - BEHAVIORAL HEALTH SERVICES ADMINISTRATION						
	OPERATING		HTH	116.00*		111.00*	
			HTH	13,975,850A		13,157,605A	
			HTH	736,873B		733,712B	
				4.00*		4.00*	
			HTH	1,235,570N		1,235,570N	
			HTH	2,250,000U		2,250,000U	
22.	HTH610 - ENVIRONMENTAL HEALTH SERVICES						
	OPERATING		HTH	139.00*		139.00*	
				5,657,842A		5,629,714A	
				6.00*		7.00*	
			HTH	595,602B		683,718B	
				7.00*		7.00*	
			HTH	515,230N		515,230N	
				2.00*		2.00*	
			HTH	74,974U		74,974U	
	INVESTMENT CAPITAL		AGS			700,000C	
23.	HTH710 - STATE LABORATORY SERVICES						
	OPERATING		HTH	86.00*		86.00*	
	INVESTMENT CAPITAL		AGS	4,906,522A		4,760,863A	
				872,000C		300,000C	
24.	HTH720 - MED FACILITIES - STDS, INSPECTION, LICENSING						
	OPERATING		HTH	15.90*		15.40*	
				950,360A		944,687A	
				20.70*		20.70*	
			HTH	1,559,994N		1,559,994N	
25.	HTH906 - COMPREHENSIVE HEALTH PLANNING						
	OPERATING		HTH	8.00*		8.00*	
			HTH	384,585A		423,567A	
				79,000B		29,000B	
26.	HTH760 - HEALTH STATUS MONITORING						
	OPERATING		HTH	29.00*		29.00*	
			HTH	1,384,171A		1,377,097A	
				250,000B		250,000B	
				2.00*		2.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	HTH AGS	397,214N		397,214N 250,000C	
27.	HTH905	- POLICY DEV & ADVOCACY FOR DEV DISABILITIES					
	OPERATING		HTH	1.50* 84,039A 6.50*		1.50* 82,275A 6.50*	
			HTH	433,728N		433,728N	
28.	HTH907	- GENERAL ADMINISTRATION					
	OPERATING		HTH	115.50* 5,730,367A 795,901N		114.50* 6,035,293A 818,751N	
	INVESTMENT CAPITAL		AGS HTH	300,000C		1,000,000C 2,000,000C	

F. SOCIAL SERVICES

1. HMS301 - CHILD WELFARE SERVICES
 

OPERATING	HMS	256.19* 20,363,900A 300,000B 184.31* 24,327,216N 425,000W	264.44* 19,888,076A 450,000B 187.06* 25,138,806N W
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2. HMS302 - CHILD CARE SERVICES
 

OPERATING	HMS	25.00* 1,566,683A 1.00* 5,256,153N	25.00* 1,008,698A 1.00* 5,390,947N
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3. HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS
 

OPERATING	HMS	23,581,347A 13,264,507N	26,290,829A 15,106,547N
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4. HMS305 - CHILD CARE PAYMENTS
 

OPERATING	HMS	16,574,607A 25,609,954N	16,574,607A 25,609,954N
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5. HMS501 - YOUTH SERVICES ADMINISTRATION
 

OPERATING	HMS	22.00* 1,297,943A 4,458,308N	22.00* 1,293,404A 4,458,308N
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6. HMS502 - YOUTH SERVICES PROGRAM
 

OPERATING	HMS	3,522,574A 870,342N	3,522,574A 970,342N
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7. HMS503 - YOUTH RESIDENTIAL PROGRAMS
 

OPERATING	HMS	76.50* 5,293,166A 1,802,704N .50* 11,940U 200,000C	76.50* 5,474,741A 1,802,704N .50* 15,940U
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8. DEF112 - SERVICES TO VETERANS
 

OPERATING	DEF	24.00* 1,215,616A	24.00* 1,118,545A
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## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	DEF			3,200,000C 250,000 <sup>i</sup>	
9.	HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH			80.58*		99.58*	
	OPERATING		HMS	7,692,398A .92*		14,603,609A 17.92*	
			HMS	5,055,269N		5,067,487N	
			HMS	10,000R		10,000R	
			HMS	280,106U		280,106U	
	INVESTMENT CAPITAL		HMS			425,000C 0 <sup>i</sup>	
10.	HMS201 - TEMP ASSISTANCE TO NEEDY FAMILIES						
	OPERATING		HMS	12,269,081A		12,469,081A	
			HMS	61,600,014N		55,285,514N	
11.	HMS202 - PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED						
	OPERATING		HMS	22,426,631A		13,303,299A	
12.	HMS204 - GENERAL ASSISTANCE PAYMENTS						
	OPERATING		HMS	24,761,632A		23,761,632A	
13.	HMS206 - FEDERAL ASSISTANCE PAYMENTS						
	OPERATING		HMS	1,491,331N		1,491,331N	
14.	HMS203 - TEMP ASSISTANCE TO OTHER NEEDY FAMILIES						
	OPERATING		HMS	37,283,204A		36,741,096A	
15.	BED220 - RENTAL HOUSING SERVICES						
	OPERATING		BED	1,007,337A 198.00*		1,007,337A 198.00*	
			BED	42,130,589N 23.00*		42,130,589N 23.00*	
			BED	3,722,544W		3,694,722W	
	INVESTMENT CAPITAL		BED	3,375,000C		11,125,000C	
			BED	7,347,000N			
16.	BED807 - TEACHER HOUSING						
	OPERATING		BED	252,131W		252,131W	
17.	BED229 - HCDCH ADMINISTRATION						
				29.00*		29.00*	
	OPERATING		BED	10,226,428N 20.00*		10,226,428N 20.00*	
			BED	2,767,712W		2,737,806W	
	INVESTMENT CAPITAL		BED			2,885,000C	
			BED	15,580,000N		15,580,000N	
18.	BED225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP						
				11.00*		11.00*	
	OPERATING		BED	1,383,262N 11.00*		1,383,262N 11.00*	
			BED	1,991,359W		1,964,833W	
19.	BED223 - BROADENED HOMESITE OWNERSHIP						
	OPERATING		BED	240,809W		237,838W	
20.	BED227 - HOUSING FINANCE						
	OPERATING		BED	3,000,000N		3,000,000N	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			BED	11.00*		11.00*	
				1,386,881W		1,360,192W	
21.	BED222	RENTAL ASSISTANCE SERVICES					
	OPERATING		BED	5.25*		5.25*	
			BED	1,938,054A		1,592,894A	
			BED	11.75*		11.75*	
				25,343,291N		25,343,291N	
22.	BED224	HOMELESS SERVICES					
	OPERATING		BED	4.00*		4.00*	
			BED	4,869,640A		4,867,631A	
	INVESTMENT CAPITAL		BED	1,369,108N		1,369,108N	
				420,000C			
23.	BED231	RENTAL HOUSING TRUST FUND					
	OPERATING		BED	6,653,827T		14,008,563T	
24.	HMS230	HEALTH CARE PAYMENTS					
	OPERATING		HMS	173,476,763A		165,068,225A	
			HMS	234,824,015N		225,987,654N	
			HMS	10,341,215U		10,341,215U	
25.	HMS603	HOME AND COMMUNITY BASED CARE SERVICES					
	OPERATING		HMS	13,467,039A		13,467,039A	
			HMS	39,375,341N		52,004,581N	
			HMS	22,064,862U		26,923,279U	
26.	HMS245	QUEST HEALTH CARE PAYMENTS					
	OPERATING		HMS	120,054,939A		137,123,743A	
			HMS	158,896,301N		184,771,942N	
27.	HMS236	ELIG DETER. & EMPLOYMT RELATED SVCS					
	OPERATING		HMS	335.17*		334.60*	
				11,564,292A		11,466,192A	
				259.83*		259.40*	
			HMS	13,319,822N		13,291,599N	
28.	HMS238	DISABILITY DETERMINATION					
	OPERATING		HMS	45.00*		45.00*	
				4,798,445N		4,798,445N	
29.	ATG500	CHILD SUPPORT ENFORCEMENT SERVICES					
	OPERATING		ATG	52.36*		52.02*	
			ATG	1,780,382A		1,675,395A	
				128.70*		128.04*	
			ATG	13,596,307N		13,492,082N	
				13.94*		13.94*	
			ATG	2,645,885T		2,645,228T	
30.	HMS237	EMPLOYMENT & TRAINING					
	OPERATING		HMS	517,033A		517,033A	
			HMS	1,197,541N		1,197,541N	
31.	HHL602	PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS					
	OPERATING		HHL	33.00*		29.00*	
			HHL	1,359,546A		1,196,452A	
				85.00*		87.00*	
			HHL	6,013,558B		6,079,955B	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
32.	HTH904 - EXECUTIVE OFFICE ON AGING						
	OPERATING		HTH	3.55* 6,102,342A		3.55* 5,791,342A	
				7.45*		7.45*	
	INVESTMENT CAPITAL		HTH AGS	5,875,828N 505,000C		5,886,044N	
33.	HTH520 - PRG DEV, COORD OF SVS, ACCESS FOR PERS W/DISABILITIES						
	OPERATING		HTH	5.00* 725,960A		5.00* 714,052A	
34.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS						
	OPERATING		HMS	104.50* 8,889,569A		104.50* 8,864,220A	
				108.50* 15,945,620N		108.50* 15,958,055N	
35.	HMS903 - GEN SPPT FOR BEN, EMPLOYMT & SPPT SVCS						
	OPERATING		HMS	57.03* 10,088,832A		57.60* 10,360,111A	
				47.97* 19,327,103N		48.40* 25,110,032N	
36.	HMS904 - GENERAL ADMINISTRATION (DHS)						
	OPERATING		HMS	173.84* 7,736,317A		171.84* 7,370,908A	
				15.16* 1,462,437N		15.16* 1,300,089N	
	INVESTMENT CAPITAL		HMS	250,000C			
37.	HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES						
	OPERATING		HMS	18.56* 3,285,306A		27.56* 1,456,860A	
				10.44* 2,372,151N		19.44* 1,395,071N	
G. FORMAL EDUCATION							
1.	EDN100 - SCHOOL-BASED BUDGETING						
	OPERATING		EDN	11,849.50* 884,044,285A		11,749.50* 912,523,132A	
						912,376,132 <sup>1</sup>	
			EDN	5,372,924B		5,372,924B	
			EDN	61,824,930N		61,199,930N	
			EDN	3,410,000T		3,410,000T	
			EDN	928,135U		928,135U	
			EDN	3,000,000W		3,000,000W	
	INVESTMENT CAPITAL		AGS	82,245,000B		88,162,000B	
			AGS	14,562,000C		34,783,000C	
			AGS	125,000R		209,000R	
			EDN	250,000B		250,000B	
			EDN	493,000C			
2.	EDN150 - COMPREHENSIVE SCHOOL SUPPORT SERVICES						
	OPERATING		EDN	4,207.50* 221,201,070A		4,127.50* 221,060,594A	
				2.00* 25,918,685N		2.00* 25,918,685N	
			EDN	1,000,000U		1,000,000U	



## PROGRAM APPROPRIATIONS

				APPROPRIATIONS			
ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
3. EDN200 - INSTRUCTIONAL SUPPORT							
	OPERATING		EDN	220.50*		220.50*	
			EDN	18,439,063A		18,063,031A	
			EDN	2,340,205N		2,340,205N	
			EDN	800,000U		800,000U	
			EDN	750,000W		750,000W	
4. EDN300 - STATE AND DISTRICT ADMINISTRATION							
	OPERATING		EDN	404.00*		404.00*	
			EDN	27,327,522A		29,092,339A	
			EDN	2,280,731N		1,892,615N	
5. EDN400 - SCHOOL SUPPORT							
	OPERATING		EDN	1,593.60*		1,610.60*	
			EDN	108,613,109A		107,276,815A	
			EDN	720.50*		728.50*	
			EDN	18,888,750B		18,888,750B	
			EDN	3.00*		3.00*	
			EDN	32,632,649N		32,632,649N	
6. EDN500 - SCHOOL COMMUNITY SERVICE							
	OPERATING		EDN	35.50*		35.50*	
			EDN	16,635,104A		13,161,883A	
			EDN	1,939,006B		1,939,006B	
			EDN	1,889,147N		1,889,147N	
			EDN	530,000W		530,000W	
7. AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS							
	OPERATING		AGS	240.00*		240.00*	
	INVESTMENT CAPITAL		AGS	23,259,540A		22,722,767A	
			AGS	125,000,000C		120,000,000C	
8. EDN407 - PUBLIC LIBRARIES							
	OPERATING		EDN	520.05*		525.05*	
			EDN	21,445,594A		21,290,925A	
			EDN	3,125,000B		3,125,000B	
	INVESTMENT CAPITAL		EDN	865,244N		865,244N	
			AGS	5,000,000C		6,651,000C	
9. UOH100 - UNIVERSITY OF HAWAII, MANOA							
	OPERATING		UOH	3,426.34*		3,438.34*	
			UOH	174,483,204A		172,483,484A	
			UOH	79.75*		79.75*	
			UOH	60,416,966B		65,816,966B	
			UOH	78.06*		78.06*	
			UOH	5,411,667N		5,411,667N	
			UOH	207.75*		302.75*	
	INVESTMENT CAPITAL		UOH	61,703,671W		95,760,781W	
			UOH	750,000B			
			UOH	14,550,000C		17,204,000C	
			UOH			94,320,000E	
			UOH	2,600,000N		1,000,000N	
			UOH	4,382,000R		35,000,000R	
			UOH	8,834,000W			
10. UOH210 - UNIVERSITY OF HAWAII, HILO							
	OPERATING		UOH	354.25*		361.25*	
			UOH	17,677,813A		19,089,013A	
			UOH	14.00*		14.00*	
			UOH	7,340,557B		7,340,557B	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			UOH	394,543N		394,543N	
				11.50*		11.50*	
		INVESTMENT CAPITAL	UOH	4,084,938W		4,084,938W	
			UOH	1,200,000C		11,550,000C	
			UOH	19,980,000N			
11.	UOH220	- SMALL BUSINESS DEVELOPMENT OPERATING	UOH	648,675A		638,065A	
12.	UOH700	- UNIVERSITY OF HAWAII, WEST OAHU					
		OPERATING		47.50*		47.50*	
			UOH	2,260,139A		2,249,088A	
			UOH	1,200,000B		1,200,000B	
			UOH	7,000N		7,000N	
		INVESTMENT CAPITAL	UOH	125,000W		125,000W	
			UOH	8,000,000C			
13.	UOH800	- UH - COMMUNITY COLLEGES					
		OPERATING		1,522.25*		1,532.25*	
			UOH	68,315,584A		69,168,341A	
				77.50*		77.50*	
			UOH	38,937,433B		39,037,433B	
				15.60*		15.60*	
			UOH	3,540,927N		3,540,927N	
				4.50*		4.50*	
		INVESTMENT CAPITAL	UOH	4,848,882W		4,848,882W	
			AGS	2,000,000C			
			UOH	4,851,000C		6,207,000C	
14.	UOH900	- UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT					
		OPERATING		322.00*		320.00*	
			UOH	164,939,049A		172,613,258A	
				4.00*		4.00*	
			UOH	1,368,128B		1,368,128B	
				4.00*		4.00*	
			UOH	457,667N		457,667N	
				100.00*		5.00*	
		INVESTMENT CAPITAL	UOH	45,112,127W		13,157,802W	
			AGS	5,759,000C		9,649,000C	
			UOH	32,172,000C		39,434,000C	
			UOH	1,000,000W			
<b>H. CULTURE AND RECREATION</b>							
1.	UOH881	- AQUARIA					
		OPERATING		13.00*		13.00*	
			UOH	516,306A		507,861A	
				7.00*		7.00*	
		INVESTMENT CAPITAL	UOH	1,718,689B		1,718,689B	
			AGS	983,000C			
2.	AGS881	- PERFORMING & VISUAL ARTS EVENTS					
		OPERATING		10.00*		10.00*	
			AGS	2,281,143A		2,214,437A	
				9.00*		9.00*	
			AGS	4,089,064B		4,082,959B	
			AGS	738,787N		738,787N	
		INVESTMENT CAPITAL	AGS	3,458,000B		975,000B	
			AGS			8,980,000C	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
						980,000 <sup>1</sup>	
3.		LNR802 - HISTORIC PRESERVATION					
		OPERATING	LNR	13.00*		13.00*	
			LNR	697,364A		696,854A	
			LNR	111,431B		111,431B	
		INVESTMENT CAPITAL	LNR	435,841N		435,841N	
						1,000,000C	
4.		LNR804 - FOREST RECREATION					
		OPERATING	LNR	36.00*		36.00*	
			LNR	1,250,983A		1,220,750A	
			LNR	3.50*		3.50*	
			LNR	311,817B		314,467B	
			LNR	3.50*		3.50*	
			LNR	511,308N		511,308N	
			LNR	505,324W		399,790W	
5.		LNR805 - RECREATIONAL FISHERIES					
		OPERATING	LNR	7.00*		7.00*	
			LNR	152,252A		152,252A	
			LNR	68,000B		68,000B	
			LNR	420,418N		420,418N	
6.		LNR806 - PARK DEVELOPMENT AND OPERATION					
		OPERATING	LNR	112.00*		101.00*	
			LNR	5,326,827A		4,896,292A	
			LNR	181,164B		584,164B	
		INVESTMENT CAPITAL	LNR	3,900,000C		8,020,000C	
						7,700,000 <sup>1</sup>	
7.		LNR801 - OCEAN-BASED RECREATION					
		OPERATING	LNR	92.00*		92.00*	
			LNR	14,547,220B		15,499,230B	
			LNR	700,000N		700,000N	
		INVESTMENT CAPITAL	LNR	220,000C		950,000C	
			LNR	960,000D		4,900,000D	
			LNR	200,000E		2,000,000E	
			LNR	855,000N		3,350,000N	
8.		AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM					
		OPERATING	AGS	39.50*		39.50*	
		INVESTMENT CAPITAL	AGS	6,206,172B		6,106,277B	
			AGS	825,000B		275,000B	
						4,000,000C	
9.		LNR807 - PARK INTERPRETATION					
		OPERATING	LNR	17.00*		18.00*	
		INVESTMENT CAPITAL	LNR	1,642,082B		1,662,855B	
			LNR	360,000B		560,000B	
10.		LNR809 - PARKS ADMINISTRATION					
		OPERATING	LNR	7.00*		7.00*	
			LNR	327,844A		313,877A	
			LNR	285,201N		285,201N	
<b>I. PUBLIC SAFETY</b>							
1.		PSD402 - HALAWA CORRECTIONAL FACILITY					
				407.00*		407.00*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		OPERATING	PSD	17,348,182A		17,264,320A	
			PSD	830,523W		50,427W	
		INVESTMENT CAPITAL	AGS			713,000C	
2.		PSD403 - KULANI CORRECTIONAL FACILITY					
				79.00*		79.00*	
		OPERATING	PSD	3,601,163A		3,592,482A	
		INVESTMENT CAPITAL	AGS			229,000C	
3.		PSD404 - WAIAWA CORRECTIONAL FACILITY					
				108.00*		108.00*	
		OPERATING	PSD	4,079,645A		4,069,831A	
			PSD	179,392W		15,000W	
4.		PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER					
				166.00*		166.00*	
		OPERATING	PSD	5,896,665A		5,797,505A	
5.		PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER					
				187.00*		187.00*	
		OPERATING	PSD	6,220,655A		6,180,072A	
			PSD	200,000S		200,000S	
		INVESTMENT CAPITAL	AGS	500,000C		20,000,000C	
6.		PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER					
				495.00*		484.00*	
		OPERATING	PSD	22,317,187A		20,731,907A	
			PSD	615,069W		30,000W	
		INVESTMENT CAPITAL	AGS	91,000C			
7.		PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER					
				68.00*		68.00*	
		OPERATING	PSD	2,538,789A		2,521,513A	
8.		PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER					
				137.00*		137.00*	
		OPERATING	PSD	5,498,119A		5,418,529A	
		INVESTMENT CAPITAL	AGS	163,000C			
9.		PSD410 - INTAKE SERVICE CENTERS					
				44.00*		44.00*	
		OPERATING	PSD	2,024,158A		2,015,877A	
10.		PSD420 - CORRECTION PROGRAM SERVICES					
				205.50*		198.50*	
		OPERATING	PSD	16,596,394A		16,548,150A	
11.		PSD421 - HEALTH CARE					
				160.93*		160.93*	
		OPERATING	PSD	9,953,374A		9,903,777A	
12.		PSD501 - PROTECTIVE SERVICES					
				95.50*		94.50*	
		OPERATING	PSD	3,287,634A		3,238,860A	
				7.00*		7.00*	
			PSD	519,158N		519,158N	
				13.00*		13.00*	
			PSD	1,347,713U		1,347,713U	
13.		PSD502 - NARCOTICS ENFORCEMENT					

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
				12.00*		12.00*	
	OPERATING		PSD	548,560A		548,478A	
				4.00*		4.00*	
			PSD	288,808W		288,808W	
14.	PSD503 - SHERIFF			148.00*		143.00*	
	OPERATING		PSD	4,935,421A		4,755,210A	
				27.00*		63.00*	
			PSD	1,629,804U		4,098,564U	
15.	PSD611 - ADULT PAROLE DETERMINATIONS			2.00*		2.00*	
	OPERATING		PSD	196,355A		196,352A	
16.	PSD612 - ADULT PAROLE SUPERVISION & COUNSELING			44.00*		44.00*	
	OPERATING		PSD	1,896,361A		1,893,012A	
17.	PSD613 - CRIME VICTIM COMPENSATION COMMISSION			6.00*		6.00*	
	OPERATING		PSD	1,616,740B		1,623,740B	
18.	PSD900 - GENERAL ADMINISTRATION			143.10*		139.10*	
	OPERATING		PSD	36,065,982A		39,643,407A	
			PSD			693,832B	
				3.00*		3.00*	
			PSD	126,401N		126,401N	
			PSD	75,065T		75,065T	
				9.00*		9.00*	
			PSD	9,578,537W		7,578,537W	
			PSD	742,980X		742,980X	
	INVESTMENT CAPITAL		AGS	153,000C		1,640,000C	
19.	ATG231 - STATE CRIMINAL JUSTICE INFO & IDENTIFICATION			30.00*		30.00*	
	OPERATING		ATG	1,472,294A		1,436,897A	
			ATG	2,000,000N		2,000,000N	
				12.00*		12.00*	
			ATG	1,957,216W		1,960,515W	
20.	LNR810 - PREVENTION OF NATURAL DISASTERS			3.25*		2.35*	
	OPERATING		LNR	183,276A		110,138A	
				.75*		1.65*	
			LNR	75,000N		159,351N	
	INVESTMENT CAPITAL		LNR	500,000C		4,500,000C	
			LNR	250,000N			
			LNR	250,000S			
21.	DEF110 - AMELIORATION OF PHYSICAL DISASTERS			120.80*		118.80*	
	OPERATING		DEF	7,212,679A		7,918,164A	
				39.70*		43.70*	
			DEF	7,548,563N		7,728,563N	
	INVESTMENT CAPITAL		AGS	985,000C		4,498,000C	
			AGS	100,000N		100,000N	
			DEF			355,000C	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
J. INDIVIDUAL RIGHTS							
1.	CCA102 - CABLE TELEVISION						
	OPERATING		CCA	4.00* 1,281,402B		4.00* 1,281,402B	
2.	CCA103 - CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC						
	OPERATING		CCA	23.00* 2,485,979B		23.00* 2,453,275B	
3.	CCA104 - FINANCIAL INSTITUTION SERVICES						
	OPERATING		CCA	29.00* 2,319,678B		29.00* 2,069,400B	
4.	CCA105 - PROFESSIONAL, VOCATIONAL & PERSONAL SVCS						
	OPERATING		CCA	56.00* 3,739,877B		56.00* 3,906,708B	
			CCA	4.00* 1,421,467T		4.00* 1,428,199T	
5.	BUF901 - TRANSPORTATION, COMMUNICATIONS, & UTILITIES						
	OPERATING		BUF	44.00* 5,837,420B		44.00* 5,683,485B	
6.	CCA106 - INSURANCE REGULATORY SERVICES						
	OPERATING		CCA	70.00* 8,876,796B		73.00* 8,708,902B	
			CCA	1,200,000T		200,000T	
7.	CCA110 - OFFC OF CONSUMER PROT - UNFAIR/DECEP PRAC						
	OPERATING		CCA	15.00* 1,204,016B		16.00* 1,190,544B	
			CCA	50,681T		50,681T	
8.	AGR812 - MEASUREMENT STANDARDS						
	OPERATING		AGR	17.00* 632,037A		17.00* 623,970A	
	INVESTMENT CAPITAL		AGS	3,125,000C			
9.	CCA111 - BUSINESS REGISTRATION						
	OPERATING		CCA	75.00* 5,381,259B		72.00* 5,250,040B	
10.	CCA112 - REGULATED INDUSTRIES COMPLAINTS OFFICE						
	OPERATING		CCA	14.00* 5,373,089B		17.00* 5,349,821B	
11.	CCA191 - GENERAL SUPPORT-PROTECTION OF THE CONSUMER						
	OPERATING		CCA	38.00* 2,992,783B		40.00* 4,198,877B	
	INVESTMENT CAPITAL		AGS			33,000,000C	
			CCA	2,000,000C			
12.	LTG105 - ENFORCEMENT OF INFORMATION PRACTICES						
	OPERATING		LTG	5.00* 340,914A		5.00* 334,096A	
13.	BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS						
				83.00*		83.00*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
	OPERATING		BUF	7,581,298A		7,511,173A	
14.	LNR111 - CONVEYANCES AND RECORDINGS			48.00*		48.00*	
	OPERATING		LNR	1,570,604A		1,570,604A	
			LNR	5.00*		5.00*	
				556,364B		530,811B	
15.	LTG888 - COMMISSION ON THE STATUS OF WOMEN			1.00*		1.00*	
	OPERATING		LTG	100,637A		95,414A	
<b>K. GOVERNMENT-WIDE SUPPORT</b>							
1.	GOV100 - OFFICE OF THE GOVERNOR			35.00*		35.00*	
	OPERATING		GOV	3,163,542A		2,117,126A	
			GOV			5,000R	
	INVESTMENT CAPITAL		AGS	200,000C			
			GOV	1,000C		1,000C	
2.	LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR			5.00*		3.00*	
	OPERATING		LTG	816,041A		637,413A	
3.	GOV102 - GOV - OTH POLICY DEVELOPMENT & COORDINATION			4.00*		3.00*	
	OPERATING		GOV	282,428A		225,015A	
4.	BED144 - STATEWIDE PLANNING AND COORDINATION			19.00*		20.00*	
	OPERATING		BED	1,662,219A		1,595,247A	
			BED			60,000B	
			BED	4.00*		4.00*	
				972,000N		972,000N	
5.	BED103 - STATEWIDE LAND USE MANAGEMENT			7.00*		7.00*	
	OPERATING		BED	416,893A		397,697A	
6.	BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY						
7.	BED130 - ECON PLANNING & RESEARCH			17.00*		16.00*	
	OPERATING		BED	916,162A		819,937A	
			BED	3.00*		4.00*	
				2,617,034B		1,292,034B	
8.	BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING			51.00*		49.00*	
	OPERATING		BUF	122,831,542A		130,297,547A	
			BUF	146,546,305U		158,586,614U	
	INVESTMENT CAPITAL		AGS	5,000,000C			
			BUF	109,625,000C		109,066,000C	
9.	LTG101 - CAMPAIGN SPENDING COMMISSION			4.00*		4.00*	
	OPERATING		LTG	371,122T		4,399,810T	
10.	LTG102 - OFFICE OF ELECTIONS						

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
	OPERATING		LTG	3,301,280A	4.00*	2,601,084A	4.00*
11.	TAX102 - INCOME ASSESSMENT AND AUDIT						
	OPERATING		TAX	4,228,691A	111.00*	4,194,906A	109.00*
12.	TAX103 - TAX COLLECTIONS ENFORCEMENT						
	OPERATING		TAX	2,761,950A	93.00*	2,744,586A	87.50*
13.	TAX105 - TAX SERVICES & PROCESSING						
	OPERATING		TAX	4,992,064A	99.00*	4,899,395A	97.50*
14.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION						
	OPERATING		TAX	5,277,430A	40.00*	4,831,099A	36.00*
15.	AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE						
	OPERATING		AGS	665,431A	7.00*	663,005A	7.00*
16.	AGS102 - EXPENDITURE EXAMINATION						
	OPERATING		AGS	993,607A	19.00*	988,388A	19.00*
17.	AGS103 - RECORDING AND REPORTING						
	OPERATING		AGS	537,963A	12.00*	535,074A	12.00*
18.	AGS104 - INTERNAL POST AUDIT						
	OPERATING		AGS	1,291,995A	13.00*	1,286,587A	13.00*
19.	BUF115 - FINANCIAL ADMINISTRATION						
	OPERATING		BUF	247,170,008A	21.00*	256,979,670A	21.00*
			BUF	3,000,000T		3,000,000T	
			BUF	171,989,596U	1.00*	178,809,841U	1.00*
20.	ATG100 - LEGAL SERVICES						
	OPERATING		ATG	18,171,350A	202.15*	17,002,578A	201.15*
			ATG	488,894B	4.00*	503,661B	4.00*
			ATG	8,770,200N	12.00*	9,314,501N	12.00*
			ATG	3,918,000T		3,918,000T	
			ATG	6,393,679U	40.85*	6,450,785U	40.85*
			ATG	3,181,635W	4.00*	3,181,635W	4.00*
21.	AGS131 - INFORMATION PROCESSING SERVICES						
	OPERATING		AGS	12,183,401A	168.00*	11,831,025A	164.00*
			AGS	2,035,654U	33.00*	2,182,654U	33.00*



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	AGS	2,000,000C			
22.	AGS161	- COMMUNICATION					
				7.00*		7.00*	
		OPERATING	AGS	2,116,267A		2,112,404A	
		INVESTMENT CAPITAL	AGS	2,325,000C		5,130,000C	
23.	HRD102	- WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION AND EFF.					
				111.00*		108.00*	
		OPERATING	HRD	14,244,310A		12,226,171A	
			HRD	600,000B		949,846B	
			HRD	4,886,281U		4,886,281U	
			HRD	100,000W			W
24.	HRD191	- SUPPORTING SERVICES-HUMAN RESOURCES DEVELOPMENT					
				11.00*		8.00*	
		OPERATING	HRD	1,241,044A		1,107,507A	
25.	BUF141	- RETIREMENT					
		OPERATING	BUF	109,545,372A		129,623,582A	
			BUF	140,669,317U		166,245,562U	
				55.00*		61.00*	
			BUF	5,531,594X		6,661,026X	
26.	BUF142	- HEALTH & LIFE INSURANCE BENEFITS					
				15.00*		15.00*	
		OPERATING	BUF	636,932A		620,176A	
			BUF	411,028,644T		440,744,413T	
27.	BUF143	- HAWAII EMPLOYER-UNION TRUST FUND					
		OPERATING	BUF	238,673T		1,783,659T	
28.	LNR101	- PUBLIC LANDS MANAGEMENT					
		OPERATING	LNR	30,000A			
				54.00*		56.00*	
			LNR	5,521,180B		7,453,156B	
						5,703,156I	
			LNR	72,634N		72,634N	
		INVESTMENT CAPITAL	LNR	4,505,000B		195,000B	
			LNR	125,000C		3,450,000C	
			LNR	4,000,000N			
29.	AGS203	- RISK MANAGEMENT					
				4.00*		4.00*	
		OPERATING	AGS	281,308A		347,646A	
			AGS	7,825,000W		10,450,000W	
30.	AGS211	- LAND SURVEY					
				18.00*		18.00*	
		OPERATING	AGS	774,953A		774,526A	
			AGS			285,000U	
31.	AGS223	- OFFICE LEASING					
				4.00*		4.00*	
		OPERATING	AGS	12,822,611A		12,245,487A	
			AGS	5,500,000U		5,500,000U	
32.	AGS221	- CONSTRUCTION					
				19.00*		19.00*	
		OPERATING	AGS	1,117,414A		1,036,690A	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		INVESTMENT CAPITAL	AGS	4,000,000W		4,000,000W	
			AGS	11,807,000C		9,980,000C	
33.	AGS231	- CUSTODIAL SERVICES					
		OPERATING		155.50*		155.50*	
			AGS	12,362,248A		10,860,330A	
			AGS			58,744B	
			AGS	430,501U		894,001U	
34.	AGS232	- GROUNDS MAINTENANCE					
		OPERATING		30.50*		41.50*	
			AGS	944,196A		1,260,932A	
35.	AGS233	- BUILDING REPAIRS AND ALTERATIONS					
		OPERATING		30.00*		30.00*	
		INVESTMENT CAPITAL	AGS	2,809,737A		2,442,891A	
			AGS	5,000,000C		10,360,000C	
36.	AGS240	- STATE PROCUREMENT					
		OPERATING		21.00*		21.00*	
			AGS	971,234A		993,772A	
			AGS			50,000W	
37.	AGS244	- SURPLUS PROPERTY MANAGEMENT					
		OPERATING		5.00*		5.00*	
			AGS	989,213W		989,213W	
38.	AGS251	- MOTOR POOL					
		OPERATING		13.50*		13.50*	
			AGS	2,227,022W		2,179,928W	
39.	AGS252	- PARKING CONTROL					
		OPERATING		26.50*		26.50*	
			AGS	2,877,232W		2,877,232W	
40.	AGS111	- RECORDS MANAGEMENT					
		OPERATING		20.00*		19.00*	
			AGS	708,027A		702,573A	
41.	AGS901	- GENERAL ADMINISTRATIVE SERVICES					
		OPERATING		45.00*		42.00*	
			AGS	2,218,750A		1,884,695A	
				1.00*		1.00*	
			AGS	46,615U		46,615U	
			AGS	11,257,500W		W	
42.	SUB201	- CITY AND COUNTY OF HONOLULU					
		INVESTMENT CAPITAL	CCH			765,000C	
						340,000 <sup>1</sup>	
			CCH			425,000S	
						0 <sup>1</sup>	
43.	SUB301	- COUNTY OF HAWAII					
		INVESTMENT CAPITAL	COH	1,500,000C		1,500,000C	
44.	SUB401	- COUNTY OF MAUI					
		INVESTMENT CAPITAL	COM	2,000,000C			
45.	SUB501	- COUNTY OF KAUAI					
		INVESTMENT CAPITAL	COK	660,000C		2,745,000C	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			COK			3,000,000S"	0 <sup>1</sup> 0 <sup>1</sup>

SECTION 4. Part III, Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, is amended:

(1) By adding a new section to read as follows:

"SECTION 6.1. The department of agriculture is authorized to transfer from the unappropriated balance of the agriculture park special fund to the irrigation system revolving fund the sum of \$270,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the purpose of providing supplemental operation and maintenance funds to the Honokaa-Paauilo irrigation system; provided that the department shall reimburse the transferred amount from water toll revenues generated upon return of water to the lower Hamakua ditch."

(2) By amending section 8 to read as follows:

"SECTION 8. Provided that of the special fund appropriations for the airports division (TRN 102-TRN 195), the following sums specified for special repair and maintenance projects for fiscal biennium 2001-2003, shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>	
TRN 102	\$ 3,860,000	<del>[\$ 2,925,000]</del>	\$3,825,000
TRN 104	\$ 475,000	\$ 475,000	
TRN 111	\$ 1,590,000	\$ 400,000	
TRN 114	\$ 675,200	\$ 377,000	
TRN 116	\$ 92,500	\$ -0-	
TRN 118	\$ 15,000	\$ -0-	
TRN 131	\$ 1,528,000	<del>[\$ 1,252,000]</del>	\$1,616,860
TRN 133	\$ -0-	\$ 93,000	
TRN 135	\$ 158,000	<del>[\$ 210,000]</del>	\$222,000
TRN 141	\$ 380,000	\$ 954,500	
TRN 143	\$ 150,000	\$ 150,000	
TRN 151	\$ 641,200	\$ 75,000	
TRN 161	\$ 1,577,500	<del>[\$ 632,500]</del>	\$1,817,500;

provided further that any unexpended funds shall be lapsed to the airport special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions."

(3) By adding a new section to read as follows:

"SECTION 9.1. Provided that the department of transportation airports division (TRN 102-TRN 195), shall submit a report to the legislature that shall include but not be limited to, expenditures for security at each airport, a detailed breakout of these expenditures, including the purposes for the expenditures made,

any federal funds expended for security, any additional federal funds which may be available for security, how these funds may be pursued, and why these funds were not already obtained; and provided further that the department of transportation shall submit this report to the legislature no later than twenty days prior to the convening of the 2003 regular session."

(4) By amending section 13 to read as follows:

"SECTION 13. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of [~~\$23,855,000~~] \$21,277,000 for fiscal year 2001-2002 and the sum of [~~\$25,044,000~~] \$20,326,000 for fiscal year 2002-2003 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>
Interest and principal on general obligation bonds	\$ 487,000	\$ 62,000
Interest and principal on revenue bonds	[ <del>\$23,368,000</del> ] \$20,790,000	[ <del>\$24,982,000</del> ] \$20,264,000 <sup>23</sup> ;

(5) By amending section 18 to read as follows:

"SECTION 18. Provided that of the general fund appropriation for forests and wildlife resources (LNR 402), the sum of \$180,000 for fiscal year 2001-2002 and the sum of [~~\$150,000~~] \$400,000 for fiscal year 2002-2003 shall be expended for the purposes of invasive species committees; and provided further that progress reports concerning the effectiveness of invasive species programs, amounts expended for the programs broken down by cost elements,<sup>3</sup> means of finance, and island, and justification for all expenditures on invasive species programs shall be submitted to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions."

(6) By adding a new section to read as follows:

"SECTION 21.1. Provided that of the general fund appropriation for dental diseases (HTH 141), the sum of \$200,000 for fiscal year 2002-2003 shall be expended for hospital based dental services for disabled persons with limited access."

(7) By adding a new section to read as follows:

"SECTION 22.1. Provided that of the general fund appropriation for developmental disabilities (HTH 501), the sum of \$21,267,600 for fiscal year 2002-2003 shall be expended for the home and community-based services waiver program and the intermediary care facilities/mental retardation community services; and provided further that developmental disabilities shall prepare and submit to the legislature a detailed quarterly expenditure report on the projected versus actual expenditures no later than ten days after the end of each quarter."

(8) By adding a new section to read as follows:

"SECTION 26.1. Provided that, of the special fund appropriation for health resources administration (HTH 595), the sum of \$12,374,543, or so much thereof as may be necessary for fiscal year 2002-2003, shall be deposited into the emergency budget and reserve fund."

(9) By adding a new section to read as follows:

“SECTION 26.2. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$14,584,880, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$17,512,184, or so much thereof as may be necessary for fiscal year 2002-2003, shall be expended by the department of health for the purposes specified in section 328L-4, Hawaii Revised Statutes.

Of the appropriation to be expended for the purposes specified in section 328L-4, Hawaii Revised Statutes, the sum of \$5,003,000, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$5,051,000, or so much thereof as may be necessary for fiscal year 2002-2003, shall be transferred to the department of human services to be expended for the children’s health insurance program, pursuant to section 328L-4, Hawaii Revised Statutes.”

(10) By adding a new section to read as follows:

“SECTION 26.3. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$21,821,571, or so much thereof as may be necessary for fiscal year 2001-2002, and the sum of \$6,313,542, or so much thereof as may be necessary for fiscal year 2002-2003, shall be deposited into the Hawaii tobacco prevention and control trust fund.”

(11) By adding a new section to read as follows:

“SECTION 26.4. Provided that, of the special fund appropriation for health resources administration (HTH 595), the sum of \$14,142,334, or so much thereof as may be necessary for fiscal year 2002-2003, shall be deposited into the university revenue-undertakings fund.”

(12) By amending section 31 to read as follows:

“SECTION 31. Provided that of the general fund appropriation for adult mental health - outpatient (HTH 420), the sum of [~~\$8,171,573 for fiscal year 2001-2002 and the sum of \$14,471,573~~] \$11,516,353 for fiscal year 2002-2003 shall be used to obtain additional community-based services for individuals discharged or diverted from the Hawaii state hospital; provided further that the behavioral health services administration shall be responsible for developing an implementation plan to assist the State in seeking federal money to help pay for developing community housing for the mentally ill for the adult mental health - outpatient (HTH 420); provided further that the behavioral health services administration shall be responsible for submitting a detailed quarterly progress report to the legislature to ensure fiscal accountability on the use of funds for community-based services; specifically, the report to the legislature shall include but not be limited to the following:

- (1) Progress made in developing an appropriate array of community services for patients discharged or diverted from the state hospital; and
- (2) Provide an assessment of the available capacity for services in the community and level of service utilization;

provided further that the behavioral health services administration shall be responsible for preparing and submitting detailed quarterly expenditure reports concerning the purchase of community-based adult mental health services; provided further that the report shall include but not be limited to, the following information:

- (1) The number of discharged and diverted patients entering the system by month;
- (2) The amount of funds expended by type of service; and
- (3) The amount of funds expended by the<sup>4</sup> provider;

and provided further that the report shall be submitted to the legislature no later than [thirty] twenty days [after the end of each state of Hawaii fiscal quarter

during fiscal year 2001-2002.] prior to the convening of the [2002 and] 2003 regular session.”

(13) By adding a new section to read as follows:

“SECTION 36.1. Provided that of the general fund appropriation for general administration (HTH 907), the sum of \$178,250 for fiscal year 2002-2003 shall be expended to comply with the federal mandates of the health insurance portability and accountability act (HIPAA); provided further that the department of health shall submit a status report to the legislature that shall include, but not be limited to the progress made in complying with HIPAA mandates, outstanding tasks, and an expenditure report (five months actual and seven months projected); and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session.”

(14) By adding a new section to read as follows:

“SECTION 37.1. Provided that of the general fund appropriation for child welfare services (HMS 301), the amount of \$83,385 for fiscal year 2002-2003 shall be expended for the creation of a centralized Title IV-E eligibility determination unit; provided further that the department of human services shall submit a report on the amount of federal funds drawn down by this new eligibility determination unit, the amounts and purposes of the actual (four months) and planned expenditure of the federal funds, and the actual (four months) and planned number of children aided and types of services provided by the additional federal funds; and provided further that the department of human services shall submit this report to the legislature no later than twenty days prior to the convening of the 2003 regular session.”

(15) By amending section 38 to read as follows:

“SECTION 38. Provided that of the general fund appropriation for child placement board and related client payments (HMS 303), the sum of \$9,941,824<sup>5</sup> for fiscal year 2001-2002 and [~~\$11,251,324~~] \$26,405,509 for fiscal year 2002-2003 shall be expended for [~~room and board payments for foster, relative, preadoption, group home, and bed holding services;~~] adoption assistance, permanency assistance, relative foster board, non-relative foster board, and board-related costs and difficulty of care payments; and provided further that the department of human services shall submit a report to the legislature on the number of children who receive adoption assistance or difficulty of care payments and the amount of these payments for the previous fiscal year and the current fiscal year ([~~four~~] five months actual and [~~eight~~] seven months forecasted) no later than twenty days prior to the convening of the 2002 and 2003 regular sessions.”

(16) By adding a new section as follows:

“SECTION 38.1. Provided that the department of human services shall submit a report on child placement costs and services (HMS 303); provided further that the report shall include, but not be limited to, the following information:

- 1) The feasibility of collecting of child support payments from parents whose children have been placed in foster homes or other out-of-home placements by the department for the purpose of funding services for these children;
- 2) The average adoption payment per child per month for each year since 1998;
- 3) The average foster board payment per child per month for each year since 1998;
- 4) The average adoption difficulty of care payment per child per month for each year since 1998;

- 5) The average foster board difficulty of care payment per child per month for each year since 1998;
- 6) The number of children served in relation to the following types of payments: adoption assistance, adoption difficulty of care, foster board, and foster difficulty of care;

and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session.”

(17) By adding a new section to read as follows:

“SECTION 38.2. Provided that of the general fund appropriation for the office of veteran services (DEF 112), the sum of \$5,000 for fiscal year 2002-2003 shall be expended for the production and dissemination of the Hawaii veterans newsletter; provided further that the funds shall not be expended for any other purposes; and provided further that any unexpended funds shall lapse into the general fund.”

(18) By adding a new section to read as follows:

“SECTION 42.1. Provided that of the general fund appropriation for general administration (HMS 904), the sum of \$75,000 for fiscal year 2002-2003<sup>6</sup> shall be expended for a temporary health insurance portability and accountability act project coordinator for the department of human services; provided further that the department of human services shall submit a status report to the legislature that shall include, but not be limited to, the progress made in complying with health insurance portability and accountability act mandates, all outstanding tasks, and an expenditure report (five months actual and seven months projected) of all health insurance portability and accountability act related activities performed by the department of human services; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session.”

(19) By amending section 43 to read as follows:

“SECTION 43. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$107,397,431 for fiscal year 2001-2002 and the sum of [~~\$114,602,055~~] \$116,127,712 for fiscal year 2002-2003 shall be used to pay for health fund benefits for department of education employees and transferred to the program planning, analysis and budgeting program (BUF 101) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.”

(20) By amending section 44 to read as follows:

“SECTION 44. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$117,646,768 for fiscal year 2001-2002 and the sum of [~~\$134,773,597~~] \$122,313,251 for fiscal year 2002-2003 shall be used to pay for debt service on general obligation bonds issued for department of education projects and shall be transferred to the financial administration program (BUF 115) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.”

(21) By adding a new section to read as follows:

“SECTION 51.1. Provided that the department of education shall complete a comprehensive assessment of the department’s efforts toward meeting and maintaining compliance with the Felix Consent Decree and associated federal statutes; provided further that this assessment shall, include, but not be limited to identifying department needs, such as, funding, positions (FTE’s, temporary and others),

organizational schemes (school based and administrative), facilities and equipment, and statutory/constitutional amendments necessary to maintain compliance with the Felix Consent Decree, the Individuals With Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act of 1973; provided further that the assessment shall discuss the nexus between each identified department need and the mandated requirement to justify current and additional resources; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session."

(22) By amending section 57 to read as follows:

"SECTION 57. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of \$39,148,874 for fiscal year 2001-2002 and the sum of [\$41,721,567] \$42,458,902 for fiscal year 2002-2003 shall be used to pay for health fund benefits for university of Hawaii employees and transferred to the program planning, analysis and budgeting program (BUF 101) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year."

(23) By amending section 58 to read as follows:

"SECTION 58. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of \$54,298,508 for fiscal year 2001-2002 and the sum of [\$62,203,199] \$56,452,270 for fiscal year 2002-2003 shall be used to pay for debt service on general obligation bonds issued for university of Hawaii projects and shall be transferred to the financial administration program (BUF 115), of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year."

(24) By adding a new section to read as follows:

"SECTION 60.1 The office of the legislative auditor shall perform a review of the university of Hawaii non-general funds and accounts, including, but not limited to the state higher education loan fund, the research and training revolving fund, the parking fund, the real property and facilities use revolving fund, and the tuition and special fees special fund, in order to properly organize university of Hawaii non-general funds and accounts by fund name, account number, statutory authorization, and expenditure ceiling; provided further that the university of Hawaii shall provide future expenditure plans for all ending cash balances over one-third of the ceiling of the respective fund for fiscal year 2004; and provided further that these reports shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session."

(25) By amending section 65 to read as follows:

"SECTION 65. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$24,716,470 for fiscal year 2001-2002 and the sum of [\$25,262,054] \$28,283,136 for the fiscal year 2002-2003 shall be expended for [the renewed] mainland prison contracts for transportation and necessary operation costs of housing; provided further that if the department of public safety determines that there are inmates who can be released or paroled for the purpose of treatment, and that such release or parole lowers the number of beds that need to be leased in mainland facilities, then an appropriate part of this sum may be used for treatment services; provided further that any [unexpected] unexpended funds shall lapse into the general fund; provided further that the department of public safety shall submit a report of all expenditures made for the mainland prisoners for fiscal year 2001-2002 and fiscal year 2002-2003; and provided further that this report shall



be submitted to the legislature no later than twenty days prior to the 2002 and 2003 regular session.”

(26) By amending section 66 to read as follows:

“SECTION 66. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$2,457,000 for fiscal year 2001-2002 and the sum of [~~\$3,285,000~~]<sup>6</sup> \$2,628,000 for fiscal year 2002-2003 shall be expended for the housing of [~~100 pre-trial detainees~~] 80 inmates at the Hawaii based Federal Detention Center; or mainland facilities provided further that the department of public safety shall provide a report to the legislature concerning its actions surrounding the transportation of additional inmates to mainland facilities to make available more [~~pre-trial detainee~~] space, the total cost including transportation and housing an inmate on the mainland versus renting bed space at the federal detention center, and a detailed breakdown of the criteria use<sup>8</sup> to select which inmates are eligible to be moved to mainland facilities; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the 2002 and 2003 regular session.”

(27) By amending section 75 to read as follows:

“SECTION 75. Provided that of the general fund and inter-departmental transfer funds appropriated for program planning, analysis and budgeting (BUF 101), the sums of [~~\$122,008,632~~]<sup>9</sup> \$121,224,675 and [~~\$156,323,254~~] \$158,586,614<sup>10</sup> respectively for fiscal year 2002-2003, or so much thereof as shall be necessary, shall be expended for the state employers share of health premiums for active employees and retirees; provided further that the Hawaii public employees health fund shall only contract for and offer health benefit and insurance plans that satisfy the objectives of chapter 87, Hawaii Revised Statutes; and provided further that the total aggregate costs of the plans contracted for and offered to active employees and retirees in fiscal year 2002-2003 shall not exceed the total aggregate amount appropriated for the state employers’ share of that fiscal year adjusted for active and retiree enrollment levels; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(28) By repealing section 76.

(29) By adding section 76.1 to read as follows:

“SECTION 76.1. Provided that of the general fund appropriation for the office of elections (LTG 102), the sum of \$25,000 for fiscal year 2002-2003 shall be expended for voter education; provided further that the funds shall not be expended for any other purposes; provided further that any unexpended funds shall lapse into the general fund.”

(30) By adding a new section to read as follows:

“SECTION 76.2. Provided that of the general fund appropriation for the office of elections (LTG 102), the sum of \$30,400 for fiscal year 2002-2003 shall be expended for the leasing of additional precinct counters due to reapportionment; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse into the general fund.”

(31) By adding a new section to read as follows:

“SECTION 76.3. Provided that of the general fund appropriation for the office of elections (LTG 102), the sum of \$42,250 for fiscal year 2002-2003 shall be expended for the increase in the number of poll workers due to reapportionment;

provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse into the general fund.”

(32) By adding a new section to read as follows:

“SECTION 76.4. Provided that of the general fund appropriation for the office of elections (LTG 102), the sum of \$6,000 for fiscal year 2002-2003 shall be expended for additional delivery/collection teams due to reapportionment; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse into the general fund.”

(33) By adding a new section to read as follows:

“SECTION 76.5. Provided that of the general fund appropriation for the office of elections (LTG 102), the sum of \$12,000 for fiscal year 2002-2003 shall be expended for additional ballot transport services due to reapportionment; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse into the general fund.”

(34) By adding a new section to read as follows:

“SECTION 76.6. Provided that of the general fund appropriation for the office of the director (TAX 107), the sum of \$25,000 for fiscal year 2002-2003 shall be expended for auditors mainland travel in order to conduct revenue producing audits; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse into the general fund.”

(35) By amending section 77 to read as follows:

“SECTION 77. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$245,093,957 for fiscal year 2001-2002 and [\$280,774,348] \$253,440,660 for fiscal year 2002-2003 shall be<sup>11</sup> used to pay for interest and principal on general obligation bonds; provided further that the<sup>12</sup> funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(36) By amending section 78 to read as follows:

“SECTION 78. Provided that of the interdepartmental transfer appropriation for financial administration (BUF 115), the sum of \$171,945,276 for fiscal year 2001-2002 and [\$196,976,796] \$178,765,521 for fiscal year 2002-2003 shall be expended for interest and principal on general obligation bonds on behalf of the university of Hawaii and department of education; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(37) By adding a new section to read as follows:

“SECTION 78.1. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$4,000 for fiscal year 2002-2003 may be established as a separate account for a bond improvement protocol fund to be expended at the discretion of the director of finance for the promotion and improvement of state bond ratings and sales.”

(38) By amending section 83 to read as follows:

“SECTION 83. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of \$2,221,620 for fiscal year 2001-2002 and the sum of \$2,221,620 for fiscal year 2002-2003 shall be expended for unemployment compensation claims of former state employees; provided further that any unrequired and unexpended funds appro-

priated for this purpose may be expended to meet workers' compensation claims; provided further that any unrequired and unencumbered funds shall be lapsed to the general fund; and provided further that the department of human resources development shall submit a detailed report of all expenditures and number of claims for unemployment compensation claim payments to the legislature no later than twenty days prior to the convening of the 2002 and 2003 regular sessions."

(39) By adding a new section to read as follows:

"SECTION 87.1. Provided that of the trust fund appropriation for the health and life insurance benefits program (BUF 142), the sum of \$238,673 for fiscal year 2001-2002 and the sum of \$1,783,659 for fiscal year 2002-2003 shall be deposited to the credit of the Hawaii employer-union health benefits trust fund program (BUF 143) to support transition related costs."

(40) By adding a new section to read as follows:

"SECTION 87.2. Provided that of the trust fund appropriation for the health and life insurance benefits program (BUF 142), the sum of \$350,000 for fiscal year 2002-2003 shall be expended to ensure that the health fund achieves compliance with the health insurance portability and accountability act (HIPPA) of 1996; provided further that the health and life insurance benefits program shall work together with the Hawaii Employer-Union Trust Fund program to achieve HIPPA compliance."

(41) By adding a new section to read as follows:

"SECTION 87.3. Provided that of the trust fund appropriation for health and life insurance benefits (BUF 142), the sum of \$719,000 for fiscal year 2002-2003 shall be expended to return funds to employee-beneficiaries including the payment of administrative expenses, postage, and fees to distribute refunds and to service inquiries from employee-beneficiaries."

(42) By adding a new section to read as follows:

"SECTION 87.4. Provided that of the appropriation authorized for executive programs Parts II of this Act for fiscal year 2001-2002, and fiscal year 2002-2003, departments may advance and be reimbursed for costs associated with providing transitions support to the Hawaii Employer-Union Health Benefits Trust Fund in fiscal year 2001-2002 and fiscal year 2002-2003; provided further that these reimbursements shall be made to departments expending funds used to provide transition assistance to the Hawaii Employer-Union Health Benefits Trust Fund; provided further that departments who are reimbursed by the Hawaii Employer-Union Benefits Trust Fund for transition related general fund expenditures shall lapse a corresponding amount of general funds at the end of the applicable fiscal year in which the expenditures were made."

(43) By adding a new section to read as follow:

"SECTION 90.1. Provided that of the special fund appropriation for parking control (AGS 252), the sum of \$100,000 for fiscal year 2002-2003 may be expended on construction for parking gates for the Miller Street parking entrance and exit of the State Capitol."

SECTION 5. Part IV, Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, is amended by amending section 91 to read as follows:

"SECTION 91. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED.

The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project, if such combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

### CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000's)				
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
A. ECONOMIC DEVELOPMENT							
BED102 - BUSINESS SERVICES							
0A.	FI001	FILM FACILITY RENOVATIONS AND IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CONVERTING OLD STAGE TO MILL, DEMOLISH OLD MILL, AND ADD A SOUNDSTAGE.					
		DESIGN					300
		CONSTRUCTION					6,900
		EQUIPMENT					100
		TOTAL FUNDING	BED		C		7,300C
BED107 - FOREIGN TRADE ZONE							
0B.		PIER 2 WAREHOUSE AND OFFICE IMPROVEMENTS, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF EXISTING OFFICE AND WAREHOUSE SPACE.					
		INSTALLATION OF A NEW CHILL STORAGE ROOM. PROJECT MAY INCLUDE IMPROVEMENTS TO EXISTING AIR CONDITIONING SYSTEM.					
		PLANS					50
		DESIGN					50
		CONSTRUCTION					2,350
		EQUIPMENT					700
		TOTAL FUNDING	BED		C		3,150C
BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT							
0C.		HONOLULU WATERFRONT MASTER PLAN, OAHU					
		PLANS FOR A HONOLULU WATERFRONT MASTER PLAN FOR THE DEVELOPMENT OF THE WATERFRONT.					
		PLANS					1,000
		TOTAL FUNDING	BED		B		1,000B
0D.		HONOLULU ZOO SOCIETY, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
DESIGN AND CONSTRUCTION FOR AN EDUCATION/DISCOVERY CENTER, VETERINARY CLINIC, HAWAIIAN ISLANDS EXHIBIT FOR THE HONOLULU ZOO. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.							
		DESIGN					+
							0 <sup>1</sup>
		CONSTRUCTION					999
							0 <sup>1</sup>
		TOTAL FUNDING	BED		C		1,000C
							0 <sup>1</sup>

## AGR122 - PLANT PEST AND DISEASE CONTROL

1. 19202 NEW PLANT QUARANTINE BUILDING, OAHU

PLANS, DESIGN, CONSTRUCTION, AND  
EQUIPMENT TO CONSTRUCT A NEW BUILDING  
FOR THE PLANT QUARANTINE PROGRAM ON  
OAHU.

PLANS		100	
DESIGN		409	
CONSTRUCTION		6,475	
EQUIPMENT		70	
TOTAL FUNDING	AGS	7,054C	C

## AGR131 - RABIES QUARANTINE

- 1A. 13101 ANIMAL QUARANTINE STATION IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION FOR  
IMPROVEMENTS TO THE ANIMAL QUARANTINE  
STATION INCLUDING RENOVATING THE ENTRY  
AREA AND EXPANDING THE BUSINESS OFFICE,  
RELOCATING DUMPSTER, DEMOLISHING  
UNUSABLE AND DETERIORATING ANIMAL  
KENNELS, CONSTRUCTING PARKING SPACES,  
GRADING, PAVING, FENCING, LANDSCAPING,  
AND OTHER IMPROVEMENTS.

DESIGN			49
CONSTRUCTION			231
TOTAL FUNDING	AGS	C	280C

## AGR141 - AGRICULTURAL RESOURCE MANAGEMENT

2. 200105 PLANTATION IRRIGATION/DRAINAGE SYSTEM IMPROVEMENTS,
- 
- STATEWIDE

PLANS, DESIGN, CONSTRUCTION, AND  
EQUIPMENT FOR PLANTATION IRRIGATION/  
DRAINAGE IMPROVEMENTS. THIS PROJECT IS  
DEEMED NECESSARY TO QUALIFY FOR  
FEDERAL AID FINANCING AND/OR  
REIMBURSEMENT.

PLANS		430
DESIGN		600
CONSTRUCTION		1,570

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		EQUIPMENT			400		
		TOTAL FUNDING	AGR		3,000C		C
3.	200106	MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI					
		PLANS FOR THE IDENTIFICATION OF NEW SOURCES FOR THE MOLOKAI IRRIGATION SYSTEM, IMPROVEMENTS TO ADDRESS LONG-TERM NEEDS, AND EXPANSION.					
		PLANS			200		
		TOTAL FUNDING	AGR		200C		C
4.	980002	LOWER HAMAKUA DITCH WATERSHED PROJECT, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE LOWER HAMAKUA DITCH SYSTEM, TOGETHER WITH APPURTENANT WORKS, INCLUDING DRAINAGE AND INFRASTRUCTURE WITHIN THE WAIPIO VALLEY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1		1
		LAND			1		
		DESIGN			1		1
		CONSTRUCTION		1,797		5,588	
		TOTAL FUNDING	AGR	1,800C		5,590C	
4A.	200201	IRRIGATION SYSTEM AND AGRICULTURAL PARK IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION TO IMPROVE IRRIGATION SYSTEMS AND AGRICULTURAL PARKS STATEWIDE, INCLUDING THE REPLACEMENT OF ASBESTOS CEMENT LINED STEEL PIPES WITH DUCTILE IRON PIPE INCLUDING APPURTENANT WORKS.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					348
		TOTAL FUNDING	AGR		C		350C
4B.	200202	STATE AGRICULTURAL WATER AND USE DEVELOPMENT PLAN, STATEWIDE					
		PLANS TO PREPARE STATE AGRICULTURAL WATER PLAN AS MANDATED BY ACT 101, SLH 1998. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					600
		TOTAL FUNDING	AGR		C		300C
			AGR		N		300N
4C.		AGRICULTURAL WATER AND INFRASTRUCTURE DEVELOPMENT, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF NEW WATER RESOURCES AND IMPROVEMENTS TO EXISTING AGRICULTURAL WATER INFRASTRUCTURE, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1
		LAND					1
		DESIGN					1
		CONSTRUCTION				1,996	
		EQUIPMENT					1
		TOTAL FUNDING	AGR		C	2,000	C
4D.		UPCOUNTRY MAUI WATERSHED PROJECT, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED PROJECT, KULA, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					50
							0 <sup>1</sup>
		LAND				250	
							0 <sup>1</sup>
		DESIGN				250	
							0 <sup>1</sup>
		CONSTRUCTION				5,400	
							0 <sup>1</sup>
		EQUIPMENT				50	
							0 <sup>1</sup>
		TOTAL FUNDING	AGR		C	6,000	C
							0 <sup>1</sup>
4E.		KEKAHA DRAINAGE AND IRRIGATION SYSTEM, KAUAI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE KEKAHA DRAINAGE AND IRRIGATION SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					250
		DESIGN					500
		CONSTRUCTION				2,000	
		EQUIPMENT				250	
		TOTAL FUNDING	AGR		C	3,000	C

## AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
5. 981921 MISCELLANEOUS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS, STATEWIDE							
DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS STATEWIDE.							
DESIGN				172		53	
CONSTRUCTION				789		1,088	
TOTAL FUNDING				AGS	961C	1,141C	
LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE							
6. C0201A ANUENUE FISHERIES RESEARCH CENTER - REPLACE FIBERGLASS ROOF, OAHU							
CONSTRUCTION TO REPLACE 20+ YEAR-OLD FIBERGLASS ROOF MADE SPECIFICALLY TO CONTROL HEAT WITH LOW ENERGY COSTS. EXISTING ROOF IS BADLY DETERIORATED BY UV, SALT AIR EXPOSURE AT SAND ISLAND, THREATENS WORKERS' SAFETY, FAILS TO CONTROL HEAT, LETS IN DIRT. AFRC REARS FISH (EG. MULLET, MOI) FOR SPORT-FISHERIES, DOES CULTURE RESEARCH.							
CONSTRUCTION				258			
TOTAL FUNDING				LNR	258C		C
BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION							
7. TE0003 MANOA INNOVATION CENTER CABLING AND WIRING REPLACEMENT, OAHU							
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPLACEMENT AND UPGRADE OF CABLING AND RELATED TECHNICAL EQUIPMENT OR SOFTWARE TO MEET CURRENT NEEDS OF TECHNOLOGY INCUBATOR TENANTS AT THE MANOA INNOVATION CENTER.							
PLANS				5			
DESIGN				20			
CONSTRUCTION				1			
EQUIPMENT				88			
TOTAL FUNDING				BED	114C		C
8. TE0005 MAUI RESEARCH AND TECHNOLOGY CENTER BUILDING C, MAUI							
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR BUILDING(S) ON THE SITE OF THE MAUI RESEARCH AND TECHNOLOGY CENTER, KIHAI, MAUI, HAWAII. BUILDING(S) TO BE USED BY TECHNOLOGY COMPANIES AND FOR TECHNOLOGY PURPOSES.							
PLANS				5			
DESIGN				700			
CONSTRUCTION				7,500			
EQUIPMENT				200			
TOTAL FUNDING				BED	8,405E		E



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
8A.	TE006	TELECOMMUNICATION EQUIPMENT REPLACEMENT, MAUI RESEARCH & TECHNOLOGY CENTER, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPLACEMENTS AT THE MAUI RESEARCH AND TECHNOLOGY CENTER. EXPENDITURES MAY INCLUDE REPLACEMENTS AND REPAIRS TO TELECOMMUNICATION EQUIPMENT AND CABLING INCLUDING ELECTRICAL WORK AT THE CENTER.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					1
		EQUIPMENT					50
		TOTAL FUNDING	BED		C		53C
8B.	TE007	MAUI RESEARCH AND TECHNOLOGY CENTER, REFURBISHMENT AND UPGRADES, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REFURBISHMENT AND UPGRADES AT THE MAUI RESEARCH AND TECHNOLOGY CENTER. EXPENDITURES MAY INCLUDE ELECTRICAL, MECHANICAL, STRUCTURAL, AND EQUIPMENT REPLACEMENT AND REPAIRS AT THE CENTER.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					53
		EQUIPMENT					5
		TOTAL FUNDING	BED		C		60C
8C.		MANOA INNOVATION CENTER, RENOVATION AND SECURITY SYSTEM REPLACEMENT, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE MANOA INNOVATION CENTER TO INCLUDE ROOF RENOVATIONS AND SECURITY SYSTEM REPLACEMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					20
		CONSTRUCTION					199
		EQUIPMENT					10
		TOTAL FUNDING	BED		C		230C
BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY							
9.	NELH10	NELHA ONSHORE DISTRIBUTION SYSTEM, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR NOMINAL 55" DIAMETER DEEP AND SURFACE SEAWATER PIPELINES AND ONSHORE DISTRIBUTION SYSTEM TO PROVIDE SEAWATER TO TENANTS LOCATED IN THE HOST PARK AREA OF NELHA.					
		CONSTRUCTION		1,004			306
		EQUIPMENT		165			40

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	BED	1,169C			346C
10.	NELH21	NELHA GATEWAY PROJECT, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PREMIER RESEARCH AND EDUCATION CENTER THAT WILL BE SITUATED ON SIX ACRES AT ENTRY ADJACENT TO QUEEN KAAHUMANU HIGHWAY & SERVE AS THE GATEWAY TO NELHA FACILITIES. CONSTRUCTION WILL INCLUDE A BUILDING OF NOT LESS THAN 5000 SQUARE FEET TO SUPPORT BOTH ONGOING & PROPOSED WORK IN SEVERAL AREAS WITH A FOCUS ON ENERGY & CLIMATE RELATED CHALLENGES & INNOVATIONS.					
		PLANS					100
		DESIGN		500			
		CONSTRUCTION		1,000		900	
		EQUIPMENT		500			
		TOTAL FUNDING	BED	2,000N			1,000N
10A.	NELH13	NELHA/HOST PARK INFRASTRUCTURE UPGRADES, HAWAII					
		DESIGN AND CONSTRUCTION OF A 12" POTABLE WATER MAIN (APPROXIMATELY 7,800 LINEAR FEET) THAT WILL COMPLY WITH COUNTY OF HAWAII STANDARDS AND CONNECT TO THE PLANNED COUNTY WATER TRANSMISSION LINE, THEREBY INCREASING THE SUPPLY OF FRESHWATER AT NELHA TO ACCOMMODATE GROWTH BY NEW TENANTS AND CURRENT TENANT EXPANSION. THIS IS THE SECOND PHASE OF CONSTRUCTION TO COMPLETE THE 12" POTABLE WATER MAIN UPGRADE AT NELHA.					
		DESIGN					15
		CONSTRUCTION				1,000	
		TOTAL FUNDING	BED		C		1,015C
<b>LNR141 - WATER AND LAND DEVELOPMENT</b>							
11.	G09	KAPAA HOMESTEADS WELL NO. 3 DEVELOPMENT, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF PUMP, CONTROLS, CONTROL BUILDING, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS		50			
		LAND		1			
		DESIGN		200			
		CONSTRUCTION				2,000	
		TOTAL FUNDING	LNR	251C			2,000C
12.	G17	LIHUE/HANAMAULU EXPLORATORY WELL, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION OF AN EXPLORATORY WELL INCLUDING WELL DRILLING, CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS		45			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			90		
		CONSTRUCTION					800
		TOTAL FUNDING	LNR	135C			800C
13.	G23	CENTRAL MAUI EXPLORATORY WELLS, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION OF EXPLORATORY WELLS INCLUDING WELL DRILLING, CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS			45		
		DESIGN			90		
		CONSTRUCTION					1,600
		TOTAL FUNDING	LNR	135C			1,600C
14.	J32	WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR INCREMENTAL IMPROVEMENTS, INCLUDING INJECTION WELLS, BACKWASH FILTER STRUCTURE AND FILTER CELLS, CHLORINE MIXING AND CONTACT CHAMBER, DISSOLVED AIR FLOTATION THICKENER, CLARIFIERS, PUMP STATION, FLOOD PROOFING, EQUALIZATION BASIN SYSTEM UPGRADES, AND OTHER RELATED WORK.					
		CONSTRUCTION					400
		TOTAL FUNDING	LNR		C		400C
15.	J38	MASTER PLAN FOR WAIMANO FACILITY, OAHU					
		PLANS FOR A MASTER PLAN TO DETERMINE ALTERNATIVE USES FOR THE WAIMANO FACILITY INCLUDING DEVELOPMENT, FINANCIAL AND/OR MARKET PLANS.					
		PLANS			250		
		TOTAL FUNDING	LNR	250C			C
15A.	G43	KAIMUKI WELL DEVELOPMENT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF PUMP, CONTROLS, CONNECTING PIPELINE, AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS					25
		DESIGN					200
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR		C		1,225C

## BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY

16. HCD001 KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PLANNING, DEVELOPMENT AND PROJECT COSTS, AS DEFINED IN CHAPTER 206E, HAWAII REVISED STATUTES, FOR KAKAAKO COMMUNITY DEVELOPMENT DISTRICT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.					
		PLANS		1,247		1,247	
		LAND		1		1	
		DESIGN		1		1	
		CONSTRUCTION		1		1	
		TOTAL FUNDING	BED	1,250C		1,250C	
17.	KA008	KAKAAKO MAKAI IMPROVEMENTS, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO IMPROVE INFRASTRUCTURE AND PREPARE SITES FOR FUTURE DEVELOPMENT IN KAKAAKO MAKAI. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY AND UTILITY SYSTEMS.					
		PLANS		1		1	
		LAND		1		500	
		DESIGN		1,500		1,000	
		CONSTRUCTION		8,498		8,499	
		TOTAL FUNDING	BED	10,000C		10,000C	
17A.	KA009	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, QUEEN STREET IMPROVEMENTS, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR QUEEN STREET IMPROVEMENTS BETWEEN WARD AVENUE AND KAMAKEE STREET. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY, DRAINAGE, SEWER, WATER, ELECTRICAL, TELEPHONE, AND CABLE TELEVISION SYSTEMS.					
		PLANS				1	
		LAND				500	
		DESIGN				300	
		CONSTRUCTION				5,699	
		TOTAL FUNDING	BED		C	6,500C	
17B.		RELOCATION OF PRODUCE CENTER TENANTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR RELOCATION OF THE PRODUCE CENTER AND TENANTS.					
		PLANS		250			
		DESIGN		150			
		CONSTRUCTION		1,350			
		TOTAL FUNDING	BED	1,750C			C
17C.		HONUAKAHA HOUSING COMPLEX RECONSTRUCTION AND IMPROVEMENTS, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE HONUAKAHA HOUSING COMPLEX. IMPROVEMENTS MAY INCLUDE REROOFING, SLAB REPAIR, WATERPROOFING, RENOVATIONS, REPLACEMENT OF COURTYARD AND PLANTER HARDSCAPE AND LANDSCAPE, AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION				1,398	
		TOTAL FUNDING	BED		C	1,400C	

## B. EMPLOYMENT

## LBR903 - OFFICE OF COMMUNITY SERVICES

## 0A. PACIFIC GATEWAY CENTER, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A COMMUNITY RESOURCE CENTER AND HEADQUARTERS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS				50
				0 <sup>1</sup>
LAND				850
				0 <sup>1</sup>
DESIGN				50
				0 <sup>1</sup>
CONSTRUCTION				50
				0 <sup>1</sup>
TOTAL FUNDING	LBR		C	1,000C
				0 <sup>1</sup>

## 0B. ORI ANUENUE HALE, OAHU

PLANS, DESIGN, AND CONSTRUCTION OF FACILITIES FOR ORI ANUENUE HALE, INC. FACILITIES TO INCLUDE VOCATIONAL TRAINING CENTER, HEALTH/WEELNESS ACTIVITY CENTER, RECREATIONAL FACILITY, DISTANCE LEARNING/HIGH TECH CENTER, AND HOUSING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS				25
DESIGN				75
CONSTRUCTION				400
TOTAL FUNDING	LBR		C	500C

## 0C. WAIANAE COAST YMCA, OAHU

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION OF THE WAIANAE COAST YMCA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					1
		CONSTRUCTION					999
		TOTAL FUNDING	LBR		C		1,000C
0D.		KALIHI YMCA, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION AND RENOVATION OF THE KALIHI YMCA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					1
		CONSTRUCTION					999
		TOTAL FUNDING	LBR		C		1,000C
0E.		LEEWARD YMCA, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE LEEWARD YMCA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					1
		CONSTRUCTION					999
		TOTAL FUNDING	LBR		C		1,000C

## C. TRANSPORTATION FACILITIES

## TRN102 - HONOLULU INTERNATIONAL AIRPORT

## 1. A10A HIA, TERMINAL ROADWAY IMPROVEMENTS, OAHU

CONSTRUCTION FOR PEDESTRIAN RAILING, TRAFFIC SIGNAL, IMPROVED LIGHTING AND OTHER MISCELLANEOUS IMPROVEMENTS AT THE GROUND AND SECOND LEVEL ROADWAYS.

CONSTRUCTION		100	1,800
TOTAL FUNDING	TRN	100B	1,800B

## 2. A11D HIA, ELLIOTT STREET CARGO SITE PREPARATION AND APRON, OAHU

CONSTRUCTION FOR SITE PREPARATION (GRADING, ACCESS, AND UTILITIES) AND APRON NEEDED FOR A CARGO FACILITY AT THE NORTH RAMP.

CONSTRUCTION		1,000	
TOTAL FUNDING	TRN	1,000B	B

## 3. A23J HIA, WASHWATER CONTAINMENT, OAHU

CONSTRUCTION TO EXPAND THE VEHICLE AND AIRCRAFT WASHWATER CONTAINMENT FACILITY AT THE AIRPORT. THIS PROJECT IS NEEDED TO COMPLY WITH THE NPDES PERMIT PROCESS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		2,500	
TOTAL FUNDING	TRN	1,250B	B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN	1,250N			N
4.	A41C	HIA, OVERSEAS TERMINAL CONCESSION IMPROVEMENTS, OAHU					
		CONSTRUCTION TO EXPAND AND RENOVATE THE EXISTING CONCESSION SPACE AND IMPROVEMENTS TO PUBLIC AREAS IN THE CENTRAL TERMINAL AREA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		7,500			
		TOTAL FUNDING	TRN	7,000B			B
			TRN	500N			N
5.	A41L	HIA, TICKET LOBBY CANOPIES, PHASE II, OAHU					
		CONSTRUCTION FOR ADDITIONAL COVERED AREAS FOR THE OVERSEAS TERMINAL TICKET LOBBY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		4,600			
		TOTAL FUNDING	TRN	2,300B			B
			TRN	2,300N			N
6.	A41M	HIA, TERMINAL FACILITY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE THE TERMINAL AREA TO INCORPORATE THE CURRENT THEME OF THE AIRPORT TO CREATE A POSITIVE IMAGE TO PASSENGERS.					
		DESIGN		250			
		CONSTRUCTION				750	
		TOTAL FUNDING	TRN	250B		750B	
7.	A43F	HIA, ELLIOTT STREET MAINTENANCE FACILITY SITE PREP AND APRON, OAHU					
		DESIGN AND CONSTRUCTION FOR SITE PREPARATION (GRADING, ACCESS, AND UTILITIES) AND APRON NEEDED FOR A MAINTENANCE FACILITY AT THE NORTH RAMP.					
		DESIGN		800			
		CONSTRUCTION		250		8,900	
		TOTAL FUNDING	TRN	1,050B		8,900B	
7A.	A41J	HIA, PUBLIC TOILET AND CUSTODIAL SUPPORT FACILITIES, OAHU					
		DESIGN FOR RENOVATION OF EXISTING PUBLIC RESTROOMS AND CUSTODIAL FACILITIES THROUGHOUT THE AIRPORT AND RELATED IMPROVEMENTS.					
		DESIGN				700	
		TOTAL FUNDING	TRN		B	700B	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
7B.	A41K	HIA, ARCHITECTURAL BARRIER REMOVAL, OAHU					
		CONSTRUCTION OF ARCHITECTURAL BARRIER REMOVAL TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT (ADA) REQUIREMENTS AT HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				13,700	
		TOTAL FUNDING	TRN		B	8,700B	
			TRN		N	5,000N	
7C.	A44A	HIA, INSTALLATION OF NEW PUBLIC INFORMATION SYSTEMS, OAHU					
		DESIGN OF NEW PUBLIC INFORMATION SYSTEMS INCLUDING FLIGHT INFORMATION DISPLAY SYSTEM AND PUBLIC ADDRESS SYSTEM.					
		DESIGN				750	
		TOTAL FUNDING	TRN		B	750B	
7D.	F08A	HIA, SECURITY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR SECURITY MEASURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				14,288	
		CONSTRUCTION				56,584	
		TOTAL FUNDING	TRN		B	32,292B	
			TRN		N	38,580N	
<b>TRN104 - GENERAL AVIATION</b>							
8.	A71A	KALAELOA AIRPORT IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR AIRPORT IMPROVEMENTS INCLUDING STRIPING, AIRFIELD LIGHTING, AND NAVIGATIONAL AIDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		4,330		1,200	
		TOTAL FUNDING	TRN	1,500B		360B	
			TRN	2,830N		840N	
<b>TRN111 - HILO INTERNATIONAL AIRPORT</b>							
9.	B10A	HILO INT'L AIRPORT, HELICOPTER LEASE LOTS AND FACILITIES, HAWAII					
		DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS (GRADING, ACCESS, AND UTILITIES) FOR NEW HELICOPTER LEASE LOTS AND SUPPORTING FACILITIES. PROJECT INCLUDES CONSTRUCTION OF A NEW APRON AND PARKING POSITIONS FOR HELICOPTERS, TO BE RELOCATED TO MINIMIZE OPERATIONAL CONFLICTS WITH THE NEW CARGO FACILITY.					
		DESIGN		150			
		CONSTRUCTION		150		1,350	
		TOTAL FUNDING	TRN	300B		1,350B	



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
10.	B10B	HILO INT'L AIRPORT, HOLD CARGO BUILDING, HAWAII					
		CONSTRUCTION FOR ADDITIONAL CARGO FACILITIES WITHIN THE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		17,540			
		TOTAL FUNDING	TRN	15,540B			B
			TRN	2,000N			N
11.	B10N	HILO INT'L AIRPORT, NOISE ATTENUATION, HAWAII					
		PLANS AND DESIGN FOR NOISE ATTENUATION OF PROPERTIES WITHIN THE 65-75 DNL CONTOUR RANGE.					
		PLANS				250	
		DESIGN				250	
		TOTAL FUNDING	TRN		B	500B	
11A.	B10O	HILO INT'L AIRPORT, INSTALLATION OF NEW OIL WATER SEPARATORS, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF NEW OIL WATER SEPARATORS.					
		DESIGN				100	
		CONSTRUCTION				1,000	
		TOTAL FUNDING	TRN		B	1,100B	
11B.	B10P	HILO INT'L AIRPORT, INSTALLATION OF NEW FIRE ALARM SYSTEM, HAWAII					
		DESIGN FOR THE INSTALLATION OF A NEW FIRE ALARM SYSTEM.					
		DESIGN				250	
		TOTAL FUNDING	TRN		B	250B	
11C.	B10Q	HILO INT'L AIRPORT, INSTALLATION OF SECURITY FENCING, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF SECURITY FENCING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				150	
		CONSTRUCTION				350	
		TOTAL FUNDING	TRN		B	150B	
			TRN		N	350N	
11D.	B10R	HILO INT'L AIRPORT, INSTALLATION OF NEW SECURITY SYSTEM, HAWAII					
		DESIGN FOR THE INSTALLATION OF A NEW SECURITY SYSTEM.					
		DESIGN				300	
		TOTAL FUNDING	TRN		B	300B	

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
11E.	B10S	HILO INT'L AIRPORT, MAINTENANCE BASEYARD IMPROVEMENTS, HAWAII					
		DESIGN FOR MAINTENANCE BASEYARD IMPROVEMENTS, INCLUDING REPLACING THE ROOF AND OTHER STRUCTURAL MEMBERS OF THE MAINTENANCE BUILDING, ADDING A NEW STORAGE BUILDING AND A NEW CRASH FIRE REPAIR BAY.					
		DESIGN					365
		TOTAL FUNDING	TRN		B		365B
11F.	F08B	HILO INT'L AIRPORT, SECURITY IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR SECURITY MEASURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					2,210
		CONSTRUCTION					5,995
		TOTAL FUNDING	TRN		B		3,300B
			TRN		N		4,905N
TRN114 - KONA INTERNATIONAL AIRPORT AT KE'AHOLE							
12.	C03B	KONA INT'L AIRPORT AT KEAHOLE, PARKING LOT EXPANSION, HAWAII					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING SPACES AT THE EXISTING EMPLOYEE PARKING LOT TO RELIEVE OVERFLOW CONDITIONS.					
		DESIGN			180		
		CONSTRUCTION			165		1,200
		TOTAL FUNDING	TRN		345B		1,200B
13.	C03L	KONA INT'L AIRPORT AT KEAHOLE, GENERAL AVIATION FUEL SITE PREPARATION, HAWAII					
		CONSTRUCTION FOR SITE IMPROVEMENTS NEEDED TO PROVIDE A FUEL STORAGE SYSTEM FOR GENERAL AVIATION AT THE AIRPORT.					
		CONSTRUCTION			952		
		TOTAL FUNDING	TRN		952B		B
14.	C03P	KONA INT'L AIRPORT AT KEAHOLE, RAMP K, PHASE II, HAWAII					
		CONSTRUCTION FOR PAVING THE AREA IN THE VICINITY OF THE EXISTING HELIPORT AND GENERAL AVIATION AREA FOR IMPROVED ACCESS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			1,695		
		TOTAL FUNDING	TRN		865B		B
			TRN		830N		N
15.	C03Q	KONA INT'L AIRPORT AT KEAHOLE, INTERIM FIS IMPROVEMENTS, HAWAII					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION FOR IMPROVEMENTS TO INTERIM FIS FACILITY INCLUDING INSTALLATION OF A SPRINKLER SYSTEM, CANOPY AT THE ENTRANCE OF THE FACILITY, LANDSCAPING AND DRAINAGE IMPROVEMENTS.					
		CONSTRUCTION		502			
		TOTAL FUNDING	TRN	502B			B
15A.	F08C	KONA INT'L AIRPORT AT KEAHOLE, SECURITY IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR SECURITY MEASURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				4,090	
		CONSTRUCTION				16,335	
		TOTAL FUNDING	TRN		B	7,060B	
			TRN		N	13,365N	
TRN116 - WAIMEA-KOHALA AIRPORT							
16.	C55A	WAIMEA-KOHALA AIRPORT WATER SYSTEM REPLACEMENT AND FIRE PROTECTION, HAWAII					
		DESIGN FOR IMPROVEMENTS TO TERMINAL WATER SYSTEM AND INSTALLATION OF NEW SPRINKLER SYSTEM.					
		DESIGN		200			
		TOTAL FUNDING	TRN	200B			B
TRN131 - KAHULUI AIRPORT							
17.	D04C	KAHULUI AIRPORT, SECURITY SYSTEM IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION OF BIOMETRIC SECURITY SYSTEM.					
		DESIGN		600			
		CONSTRUCTION				1,000	
		TOTAL FUNDING	TRN	600B		1,000B	
18.	D08H	KAHULUI AIRPORT, HELICOPTER APRONS AND PARKING EXPANSION, MAUI					
		DESIGN AND CONSTRUCTION FOR HELICOPTER APRONS AND PARKING LOT EXPANSION.					
		DESIGN		300			
		CONSTRUCTION		200		1,500	
		TOTAL FUNDING	TRN	500B		1,500B	
19.	D08I	KAHULUI AIRPORT, PERIMETER ROAD IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION OF PERIMETER ROAD IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		250			
		CONSTRUCTION		200		1,000	
		TOTAL FUNDING	TRN	450B		500B	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN		N		500N
20.	D08J	KAHULUI AIRPORT, T-HANGARS, MAUI					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL T-HANGARS.					
		DESIGN		150			
		CONSTRUCTION		150		500	
		TOTAL FUNDING	TRN	300B		500B	
20A.	D08K	KAHULUI AIRPORT, FUEL STORAGE SITE PREPARATION, MAUI					
		CONSTRUCTION FOR THE SITE PREPARATION OF A FUEL STORAGE TANK FARM. SITE WORK TO INCLUDE EXCAVATION, CLEARING AND GRUBBING, ACCESS ROAD AND UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION				1,300	
		TOTAL FUNDING	TRN		B	1,300B	
20B.	F08D	KAHULUI AIRPORT, SECURITY IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR SECURITY MEASURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				7,500	
		CONSTRUCTION				26,950	
		TOTAL FUNDING	TRN		B	16,075B	
			TRN		N	18,375N	
<b>TRN141 - MOLOKAI AIRPORT</b>							
20C.	F08X	MOLOKAI AIRPORT, SECURITY IMPROVEMENTS, MOLOKAI					
		DESIGN AND CONSTRUCTION FOR SECURITY MEASURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				40	
		CONSTRUCTION				220	
		TOTAL FUNDING	TRN		B	80B	
			TRN		N	180N	
<b>TRN151 - LANAI AIRPORT</b>							
21.	D70B	LANAI AIRPORT WATER TANK, LANAI					
		DESIGN AND CONSTRUCTION FOR A NEW WATER TANK AND APPURTENANCES NEEDED FOR FIRE PROTECTION.					
		DESIGN		100			
		CONSTRUCTION		50		500	
		TOTAL FUNDING	TRN	150B		500B	
22.	D70C	LANAI AIRPORT RUNWAY EXTENSION, LANAI					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR A RUNWAY AND TAXIWAY EXTENSION AT LANAI AIRPORT. THIS PROJECT REQUIRES PRIVATE CONTRIBUTIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		4,100			
		CONSTRUCTION		500			
		TOTAL FUNDING	TRN	3,600N			N
			TRN	1,000R			R
22A.	F08Y	LANAI AIRPORT, SECURITY IMPROVEMENTS, LANAI					
		DESIGN AND CONSTRUCTION FOR SECURITY MEASURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					40
		CONSTRUCTION					220
		TOTAL FUNDING	TRN		B		80B
			TRN		N		180N
TRN161 - LIHUE AIRPORT							
23.	E03H	LIHUE AIRPORT MAINTENANCE BASEYARD IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR A THREE BAY FACILITY AND IMPROVEMENTS TO THE EXISTING MAINTENANCE SHOP BUILDING AT THE MAINTENANCE BASEYARD.					
		CONSTRUCTION		1,500			
		TOTAL FUNDING	TRN	1,500B			B
24.	E03I	LIHUE AIRPORT PARKING IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL EMPLOYEE PARKING FACILITIES TO RELIEVE OVERFLOW CONDITIONS.					
		DESIGN		100			
		CONSTRUCTION		100			800
		TOTAL FUNDING	TRN	200B			800B
25.	E03J	LIHUE AIRPORT BAGGAGE CLAIM IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO BAGGAGE FACILITIES TO ACCOMMODATE LARGER BAGGAGE CAPACITY OF WIDE-BODY AIRCRAFT.					
		DESIGN		250			
		CONSTRUCTION		200			
		TOTAL FUNDING	TRN	450B			B
26.	E03K	LIHUE AIRPORT GENERAL AVIATION APRON, KAUAI					
		CONSTRUCTION FOR GENERAL AVIATION APRON AT THE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		13,800			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	TRN	7,300B			B
			TRN	6,500N			N
26A.	E03F	LIHUE AIRPORT HELIPORT IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR A HELIPORT AT THE AIRPORT.					
		CONSTRUCTION				9,500	
		TOTAL FUNDING	TRN		B	9,500B	
26B.	E03L	LIHUE AIRPORT, INSTALL NEW ENERGY MGMT. CTRL., FIRE ALARM & SECURITY SYST., KAUAI					
		DESIGN FOR THE INSTALLATION OF NEW ENERGY MANAGEMENT CONTROL, FIRE ALARM AND SECURITY SYSTEMS.					
		DESIGN				400	
		TOTAL FUNDING	TRN		B	400B	
26C.	F08Z	LIHUE AIRPORT, SECURITY IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR SECURITY MEASURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				1,580	
		CONSTRUCTION				3,850	
		TOTAL FUNDING	TRN		B	2,280B	
			TRN		N	3,150N	

## TRN163 - PORT ALLEN AIRPORT

27.	E51A	PORT ALLEN AIRPORT LEASE LOT DEVELOPMENT, KAUAI					
		DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS (GRADING, ACCESS, AND UTILITIES) FOR LEASE LOTS AND SUPPORTING FACILITIES.					
		DESIGN		150			
		CONSTRUCTION		100		1,000	
		TOTAL FUNDING	TRN	250B		1,000B	

## TRN195 - AIRPORTS ADMINISTRATION

28.	F04J	AIRPORT PLANNING STUDY, STATEWIDE					
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, PROJECT DEFINITION REPORTS, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1,500		1,500	
		TOTAL FUNDING	TRN	1,400B		1,400B	
			TRN	100N		100N	
29.	F04N	AIRPORT ENVIRONMENTAL IMPROVEMENTS, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR ENVIRONMENTAL IMPROVEMENTS AT THE STATEWIDE AIRPORT SYSTEM INCLUDING CESSPOOL AND INJECTION WELL CLOSURE, LABORATORY TESTS, AND ENVIRONMENTAL SITE ASSESSMENTS TO MEET ENVIRONMENTAL REGULATIONS.					
		PLANS			400		400
		DESIGN			100		100
		CONSTRUCTION			100		100
		TOTAL FUNDING	TRN		600B		600B
30.	F040	KAHULUI AIRPORT ROADWAY STUDY, MAUI					
		PLANS FOR IMPROVEMENTS TO KAHULUI AIRPORT ROADWAY SYSTEM FOR VEHICULAR ACCESS AND TRAFFIC FLOW.					
		PLANS			200		
		TOTAL FUNDING	TRN		200B		B
31.	F06G	LAND ACQUISITION, STATEWIDE					
		LAND ACQUISITION FOR AVIGATION EASEMENTS, PROPERTY ACQUISITION, AND RELATED COSTS SUCH AS TITLE SEARCH, BOUNDARY SURVEYS, AND LAND APPRAISALS AT AIRPORTS STATEWIDE.					
		LAND			100		100
		TOTAL FUNDING	TRN		100B		100B
32.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECTS RELATED POSITIONS.					
		PLANS			150		150
		DESIGN			750		750
		CONSTRUCTION			900		900
		TOTAL FUNDING	TRN		1,800B		1,800B
33.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE					
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.					
		DESIGN			300		300
		CONSTRUCTION			2,700		2,700
		TOTAL FUNDING	TRN		3,000B		3,000B
34.	F08P	STORMWATER PERMIT COMPLIANCE, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR FACILITIES NEEDED FOR STORMWATER PERMIT COMPLIANCE AT AIRPORTS STATEWIDE.					
		PLANS		600			
		DESIGN		500			
		CONSTRUCTION		1,250		4,000	
		TOTAL FUNDING	TRN	2,350B		4,000B	
35.	F08Q	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE					
		DESIGN AND CONSTRUCTION OF VARIOUS PROJECTS REQUIRING ARCHITECTURAL OR ENGINEERING CONSULTANT SUPPORT AT AIRPORTS STATEWIDE.					
		DESIGN		250		250	
		CONSTRUCTION		250		250	
		TOTAL FUNDING	TRN	500B		500B	
36.	F08R	FACILITY SITE PREPARATION, STATEWIDE					
		DESIGN AND CONSTRUCTION OF VARIOUS PROJECTS AT STATEWIDE AIRPORTS REQUIRING FACILITY SITE PREPARATION TO PROVIDE THE ABILITY TO DEVELOP USABLE SPACE AS NEEDED BASED ON TENANT COMMITMENTS.					
		DESIGN		500			
		CONSTRUCTION				500	
		TOTAL FUNDING	TRN	500B		500B	
36A.	F08S	RIAT RECOMMENDATIONS FOR AIRFIELD IMPROVEMENTS, STATEWIDE					
		DESIGN FOR RUNWAY INCURSION ACTION TEAM (RIAT) RECOMMENDATIONS FOR AIRFIELD IMPROVEMENTS REQUIRED BY FAA AT AIRPORTS STATEWIDE.					
		DESIGN				500	
		TOTAL FUNDING	TRN		B	500B	
36B.	F08T	MITIGATION OF ENVIRONMENTAL COMPLIANCE MEASURES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF ENVIRONMENTAL COMPLIANCE NEEDS AT AIRPORTS STATEWIDE.					
		PLANS				100	
		DESIGN				900	
		CONSTRUCTION				3,000	
		TOTAL FUNDING	TRN		B	4,000B	
36C.	F08U	AIRSIDE FIRE HYDRANT IMPROVEMENTS, STATEWIDE					
		DESIGN FOR NEW AIRSIDE FIRE HYDRANT SYSTEM AT AIRPORTS STATEWIDE.					
		DESIGN				500	
		TOTAL FUNDING	TRN		B	500B	

TRN301 - HONOLULU HARBOR



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
37.	J06	SAND ISLAND CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING, UTILITIES, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION		16,500			
		TOTAL FUNDING	TRN	16,500E			E
38.	J07	PIER 51B CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, DRAINAGE, UTILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN		650			
		CONSTRUCTION		15,000			
		TOTAL FUNDING	TRN	650B			B
			TRN	15,000E			E
39.	J09	NAVIGATIONAL IMPROVEMENTS, HONOLULU HARBOR AND KEEHI LAGOON, OAHU					
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS OF THE NAVIGATIONAL AREAS AT HONOLULU HARBOR AND KEEHI LAGOON. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		450			
		TOTAL FUNDING	TRN	450B			B
40.	J22	CRUISE TERMINAL STRUCTURE AT PIER 2, HONOLULU HARBOR, OAHU					
		CONSTRUCTION OF A NEW CRUISE TERMINAL STRUCTURE AT PIER 2, HONOLULU HARBOR, OAHU.					
		CONSTRUCTION		12,600			
		TOTAL FUNDING	TRN	12,600E			E
41.	J24	CRUISE TERMINAL FACILITIES AT PIER 2, HONOLULU HARBOR, OAHU					
		CONSTRUCTION OF APPURTENANT FACILITIES TO THE NEW CRUISE TERMINAL FACILITY STRUCTURE, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION		7,400			
		TOTAL FUNDING	TRN	7,400E			E
42.	J25	IMPROVEMENTS TO COMMERCIAL FISHING FACILITIES AT PIERS 16-18, HNL HARBOR, OAHU					
		DESIGN AND CONSTRUCTION OF A NEW COMFORT STATION, AND OTHER IMPROVEMENTS.					
		DESIGN		75			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION					400
		TOTAL FUNDING	TRN	75B			400B
43.	J33	KAPALAMA CONTAINER TERMINAL, HONOLULU HARBOR, OAHU					
		PLANS FOR THE DEVELOPMENT OF A NEW CONTAINER FACILITY. AND OTHER RELATED IMPROVEMENTS.					
		PLANS		1,000			
		TOTAL FUNDING	TRN	1,000B			B
44.	J35	KEEHI INDUSTRIAL PARK IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION OF DRAINAGE IMPROVEMENTS, AND OTHER IMPROVEMENTS.					
		DESIGN		300			
		CONSTRUCTION					4,000
		TOTAL FUNDING	TRN	300B			4,000B
44A.	J40	HARBORS DIVISION ADMINISTRATION BUILDING, HONOLULU HARBOR, OAHU					
		DESIGN OF A NEW HARBORS DIVISION ADMINISTRATION BUILDING, AND OTHER IMPROVEMENTS.					
		DESIGN					2,200
		TOTAL FUNDING	TRN		E		2,200E
<b>TRN303 - KALAELOA BARBERS POINT HARBOR</b>							
45.	J16	GANTRY CRANE, KALAELOA BARBERS POINT HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A CARGO CONTAINER GANTRY CRANE, A CRANE RAIL SYSTEM, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		400			
		CONSTRUCTION					4,400
		TOTAL FUNDING	TRN	400B			4,400B
46.	P10003	CRUISE SHIP BERTH FACILITIES, OAHU					
		DESIGN FOR PORT CALLS FOR CRUISE SHIP BERTH FACILITIES.					
		DESIGN					500
		TOTAL FUNDING	TRN		B		500B
<b>TRN311 - HILO HARBOR</b>							
47.	L02	BARGE TERMINAL IMPROVEMENTS, HILO HARBOR, HAWAII					
		DESIGN FOR IMPROVEMENTS TO BARGE TERMINAL PIER, YARD, ROADWAY, UTILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN					2,000
		TOTAL FUNDING	TRN		B		2,000B
48.	L10	HILO HARBOR IMPROVEMENTS, HAWAII					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS AT HILO HARBOR AND OTHER IMPROVEMENTS.							
		DESIGN			350		
		CONSTRUCTION			3,000		
		TOTAL FUNDING	TRN		350B		B
			TRN		3,000E		E

## TRN313 - KAWAIHAE HARBOR

49. L09 NAVIGATIONAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII

PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT KAWAIHAE HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		600		
TOTAL FUNDING	TRN	600B		B

## TRN331 - KAHULUI HARBOR

50. M01 KAHULUI HARBOR IMPROVEMENTS, MAUI

DESIGN AND CONSTRUCTION OF NEW COMFORT STATION FACILITY, IMPROVEMENTS TO WATER AND WASTEWATER SYSTEMS, AND OTHER IMPROVEMENTS.

DESIGN		200		
CONSTRUCTION				1,600
TOTAL FUNDING	TRN	200B		1,600B

51. M09 BARGE TERMINAL IMPROVEMENTS, KAHULUI HARBOR, MAUI

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARDS, SHEDS, AND OTHER IMPROVEMENTS.

DESIGN		250		
CONSTRUCTION		2,500		
TOTAL FUNDING	TRN	250B		B
	TRN	2,500E		E

## TRN361 - NAWILIWILI HARBOR

52. K01 PIER IMPROVEMENTS, NAWILIWILI HARBOR, KAUAI

DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS AT NAWILIWILI HARBOR, AND OTHER IMPROVEMENTS.

DESIGN		600		
CONSTRUCTION		5,000		
TOTAL FUNDING	TRN	600B		B
	TRN	5,000E		E

53. K02 PASSENGER SHELTER, NAWILIWILI HARBOR, KAUAI

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR A PASSENGER SHELTER AT NAWILIWILI HARBOR, AND OTHER IMPROVEMENTS.					
		DESIGN			100		
		CONSTRUCTION			800		
		TOTAL FUNDING	TRN		100B		B
			TRN		800E		E
54.	K06	NAWILIWILI HARBOR IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR OFF-SITE IMPROVEMENTS TO THE WATER SYSTEM SERVICING THE HARBOR, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION			95		
		TOTAL FUNDING	TRN		95B		B
55.	K10	REPLACE PIER 3 FENDERING, NAWILIWILI HARBOR, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF PIER FENDERING, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			75		
		CONSTRUCTION				1,000	
		TOTAL FUNDING	TRN		75B	1,000B	

## TRN395 - HARBORS ADMINISTRATION

56.	I00	HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECTS STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS			750		750
		TOTAL FUNDING	TRN		750B		750B
57.	I01	HARBOR PLANNING, STATEWIDE					
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.					
		PLANS			350		350
		TOTAL FUNDING	TRN		350B		350B
58.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					
		DESIGN			75		75

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION		250		250	
		TOTAL FUNDING	TRN	325B		325B	
59.	105	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					
		DESIGN		50		50	
		CONSTRUCTION		250		250	
		TOTAL FUNDING	TRN	300B		300B	
60.	107	ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES TO PROVIDE A SAFE WORKING ENVIRONMENT FOR MARITIME BUSINESSES AND PERSONNEL WORKING AT HARBOR FACILITIES.					
		PLANS		300		1,000	
		DESIGN		300		1,000	
		CONSTRUCTION		300		1,000	
		TOTAL FUNDING	TRN	900B		3,000B	
61.	108	REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE SYSTEMS AT HARBOR FACILITIES STATEWIDE.					
		DESIGN		75			
		CONSTRUCTION		500			
		TOTAL FUNDING	TRN	575B			B
62.	110	REMOVAL OF ARCHITECTURAL BARRIERS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL OF BARRIERS TO PERSONS WITH DISABILITIES AT STATE COMMERCIAL HARBOR FACILITIES.					
		DESIGN		100			
		CONSTRUCTION		100			
		TOTAL FUNDING	TRN	200B			B
63.	113	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE					
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION PROJECTS AT HARBOR FACILITIES, STATEWIDE.					
		CONSTRUCTION		700			
		TOTAL FUNDING	TRN	700B			B
63A.	104	COMMERCIAL HARBOR SEWER SYSTEM IMPROVEMENTS, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN FOR THE PHASE-OUT OF LARGE CAPACITY CESSPOOLS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE.					
		DESIGN				200	
		TOTAL FUNDING	TRN		B	200B	
63B.	114	FERRY TERMINAL IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FERRY TERMINAL IMPROVEMENTS INCLUDING BERTHING FACILITIES, PARKING, LIGHTING, ROADWAYS, UTILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				250	
		CONSTRUCTION				12,500	
		TOTAL FUNDING	TRN		B	2,750B	
			TRN		N	10,000N	
<b>TRN501 - OAHU HIGHWAYS</b>							
64.	S258	FARRINGTON HIGHWAY IMPROVEMENTS, NANAKULI TO MAKAHA, OAHU					
		CONSTRUCTION FOR SAFETY AND OPERATIONAL IMPROVEMENTS TO FARRINGTON HIGHWAY, PHASE I, INCLUDING SIDEWALKS, SIGNALIZED PEDESTRIAN CROSSWALKS OR BRIDGES, AND CONTINUOUS LEFT TURN LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		5,000			
		TOTAL FUNDING	TRN	1,000E			E
			TRN	4,000N			N
65.	S275	KALANIANA'OLE HIGHWAY IMPROVEMENTS, REALIGN HIGHWAY, MAKAPUU, OAHU					
		CONSTRUCTION FOR REALIGNING KALANIANA'OLE HIGHWAY IN THE VICINITY OF OCEANIC INSTITUTE, MAKAPUU. IMPROVEMENTS INCLUDE CONSTRUCTING THE ROADWAY MORE INLAND FROM THE SHORELINE.					
		CONSTRUCTION		1,000			
		TOTAL FUNDING	TRN	1,000E			E
66.	S289	KAMEHAMEHA HIGHWAY INTERSECTION IMPROVEMENTS AT KAMANANUI ROAD, OAHU					
		CONSTRUCTION FOR INSTALLING A TRAFFIC SIGNAL SYSTEM, PAVEMENT MARKINGS, AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		CONSTRUCTION		200			
		TOTAL FUNDING	TRN	200E			E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
67.	S296	KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT, OAHU					
		LAND FOR REPLACEMENT OF KAIPAPAU STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			325		
		TOTAL FUNDING	TRN		65E		E
			TRN		260N		N
68.	S297	KAMEHAMEHA HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, OAHU					
		LAND FOR REPLACEMENT OF KAWELA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			90		
		TOTAL FUNDING	TRN		25E		E
			TRN		65N		N
69.	S298	KAMEHAMEHA HIGHWAY, KOKOLOLIO STREAM BRIDGE REPLACEMENT, OAHU					
		LAND FOR REPLACEMENT OF KOKOLOLIO STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			145		
		TOTAL FUNDING	TRN		30E		E
			TRN		115N		N
70.	S299	KAMEHAMEHA HIGHWAY, NORTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU					
		LAND FOR REPLACEMENT OF NORTH KAHANA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			50		
		TOTAL FUNDING	TRN		20E		E
			TRN		30N		N
71.	S300	SAND ISLAND PARKWAY, BASCULE BRIDGE DECK REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACING THE BRIDGE DECK AND SPOT REHABILITATION AND CLEANING OF THE BRIDGE MEMBERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			3,215		
		TOTAL FUNDING	TRN		755E		E
			TRN		2,460N		N
72.	S301	FARRINGTON HIGHWAY, MAKAHA STREAM (SOUTH) BRIDGE NO. 3 REPLACEMENT, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND LAND FOR REPLACEMENT OF A TIMBER BRIDGE IN THE VICINITY OF MAKAHA BEACH PARK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			100		
		DESIGN			545		
		TOTAL FUNDING	TRN		140E		E
			TRN		505N		N
73.	S302	FARRINGTON HIGHWAY, MAKAHA STREAM (NORTH) BRIDGE NO. 3A REPLACEMENT, OAHU					
		DESIGN AND LAND FOR REPLACEMENT OF A TIMBER BRIDGE IN THE VICINITY OF MAKAHA BEACH PARK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			200		
		DESIGN			630		
		TOTAL FUNDING	TRN		170E		E
			TRN		660N		N
74.	S303	KAMEHAMEHA HIGHWAY, HAIAMOA STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN AND LAND FOR REPLACEMENT OF A DOUBLE CELL (TEN FEET X FIVE FEET) REINFORCED CONCRETE BOX CULVERT IN THE VICINITY OF KAHALUU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			100		
		DESIGN			340		
		TOTAL FUNDING	TRN		95E		E
			TRN		345N		N
75.	S304	KAMEHAMEHA HWY., IN-BOUND CANE HAUL ROAD STRUCTURE REPLMNT., VIC. OF WAIPAHU, OAHU					
		DESIGN FOR REPLACEMENT OF THE IN-BOUND CANE HAUL ROAD STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					600
		TOTAL FUNDING	TRN		E		120E
			TRN		N		480N
76.	S305	KAMEHAMEHA HWY., OUT-BOUND CANE HAUL RD. STRUCTURE REPLMNT., VIC. OF WAIPAHU, OAHU					
		DESIGN FOR REPLACEMENT OF OUT-BOUND CANE HAUL ROAD STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					630
		TOTAL FUNDING	TRN		E		130E



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN		N		500N
77.	S306	KAMEHAMEHA HIGHWAY, SOUTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN FOR REPLACEMENT OF SOUTH KAHANA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					1,220
		TOTAL FUNDING	TRN		E		245E
			TRN		N		975N
78.	S307	KAMEHAMEHA HIGHWAY, KALUANUI STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN FOR REPLACEMENT OF KALUANUI STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					865
		TOTAL FUNDING	TRN		E		175E
			TRN		N		690N
79.	S308	KAMEHAMEHA HIGHWAY IMPROVEMENTS, WAIPAHAU STREET TO KA UKA BOULEVARD, OAHU					
		PLANS FOR TRAFFIC OPERATIONAL AND OTHER IMPROVEMENTS, INCLUDING SIDEWALK, BIKEWAY, HIGHWAY LIGHTING, DRAINAGE, AND OTHER IMPROVEMENTS.					
		PLANS			300		
		TOTAL FUNDING	TRN		300E		E
80.	S309	KAMEHAMEHA HIGHWAY IMPROVEMENTS, WAIHONA STREET TO CENTER DRIVE, OAHU					
		PLANS FOR TRAFFIC OPERATIONAL AND OTHER IMPROVEMENTS, INCLUDING TRAFFIC SIGNAL UPGRADE, SIDEWALK, BIKEWAY, BRIDGES, DRAINAGE, GUARDRAIL, OVERHEAD SIGNS, AND OTHER IMPROVEMENTS.					
		PLANS			750		
		TOTAL FUNDING	TRN		750E		E
81.	S310	FORT BARRETTE ROAD WIDENING, FARRINGTON HIGHWAY TO BARBERS POINT GATE, OAHU					
		PLANS FOR WIDENING THE EXISTING ROADWAY TO FOUR LANES AND OTHER IMPROVEMENTS, INCLUDING RIGHT AND LEFT TURNING LANES, SIDEWALKS, BIKEWAY, HIGHWAY LIGHTING, DRAINAGE, TRAFFIC SIGNALS, LANDSCAPING AND OTHER IMPROVEMENTS.					
		PLANS			400		
		TOTAL FUNDING	TRN		400E		E
82.	S311	TRAFFIC CONGESTION MITIGATION AT VARIOUS LOCATIONS, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS FOR FEASIBILITY ANALYSIS, TRAFFIC STUDIES, AND CONGESTION MITIGATION ALTERNATIVES FOR REGIONAL TRAFFIC CONGESTION ON EXISTING HIGHWAY FACILITIES ON OAHU.					
		PLANS			250		
		TOTAL FUNDING	TRN		250E		E
83.	SP0004	TRAFFIC SIGNALS AT HONOWAI STREET AND KUNIA ROAD, OAHU					
		DESIGN AND CONSTRUCTION FOR TRAFFIC SIGNALS AT THE INTERSECTION OF HONOWAI STREET AND KUNIA ROAD.					
		DESIGN			50		
		CONSTRUCTION			200		
		TOTAL FUNDING	TRN		250E		E
84.	SP9705	FARRINGTON HWY, DRAINAGE IMPROVEMENTS, ULEHAWA STREAM TO ULEHAWA BCH PARK, OAHU					
		LAND AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS ALONG THE MAUKA AND MAKAI SHOULDERS OF FARRINGTON HIGHWAY FRONTING ULEHAWA BEACH PARK.					
		LAND			60		
		CONSTRUCTION				600	
		TOTAL FUNDING	TRN		60E	600E	
85.	SP9707	FARRINGTON HWY., DRAINAGE IMPROVEMENTS, NANAKULI RANCH TO THE GTE BUILDING, OAHU					
		LAND AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS ALONG THE MAUKA AND MAKAI SHOULDERS OF FARRINGTON HIGHWAY FROM NANAKULI RANCH TO THE GTE BUILDING AND CONSTRUCT OCEAN OUTLET ON THE NORTHWEST SIDE OF NANAKULI BEACH PARK.					
		LAND			110		
		CONSTRUCTION				1,500	
		TOTAL FUNDING	TRN		110E	1,500E	
86.	SP9805	KAMEHAMEHA HIGHWAY-KAHEKILI HIGHWAY INTERSECTION IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR A TRAFFIC CIRCLE AT THE INTERSECTION OF KAMEHAMEHA AND KAHEKILI HIGHWAYS.					
		CONSTRUCTION			2,600		
		TOTAL FUNDING	TRN		2,600E		E
87.	SP9903	LEEWARD COMMUNITY COLLEGE, SECOND ACCESS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A SECOND ACCESS TO THE LEEWARD COMMUNITY COLLEGE.					
		PLANS			500		
		DESIGN			1		
		CONSTRUCTION			14,749		
		TOTAL FUNDING	TRN		5,250E		E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN	10,000N			N
88.	S270	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., OAHU					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING LEFT TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT TRAFFIC FLOW.					
		DESIGN				200	
		CONSTRUCTION		2,000		1,000	
		TOTAL FUNDING	TRN	2,000E		1,200E	
89.	S312	KALAELOA ROADWAY IMPROVEMENTS, VICINITY OF BARBERS POINT NAVAL AIR STATION, OAHU					
		DESIGN FOR ROADWAY IMPROVEMENTS TO ROOSEVELT ROAD, ENTERPRISE ROAD, WEST PERIMETER ROAD, CORAL SEA ROAD AND FUTURE NORTH-SOUTH ROAD CONNECTOR AND REALIGNMENT OF CORAL SEA ROAD TO INDEPENDENCE ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		2,500			
		TOTAL FUNDING	TRN	500E			E
			TRN	2,000N			N
90.	SP9709	FARRINGTON HIGHWAY MEDIAL STRIP, OAHU					
		CONSTRUCTION FOR A MEDIAL STRIP FOR FARRINGTON HIGHWAY FROM KAMEHAMEHA HIGHWAY TO FORT WEAVER ROAD.					
		CONSTRUCTION		5,000			
		TOTAL FUNDING	TRN	5,000E			E
91.	SP0101	KAHEKILI HIGHWAY IMPROVEMENTS, HAIKU ROAD TO HUI IWA STREET, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO KAHEKILI HIGHWAY FROM HAIKU ROAD TO HUI IWA STREET.					
		PLANS		100			
		DESIGN		300			
		CONSTRUCTION				3,000	
		TOTAL FUNDING	TRN	400E		3,000E	
92.	SP0102	MAUKA HIGHWAY, MAKAHA TO NANAKULI, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR A MAUKA HIGHWAY AS AN ALTERNATIVE ROUTE TO FARRINGTON HIGHWAY FROM MAKAHA TO NANAKULI.					
		DESIGN			150		
		CONSTRUCTION			850		
		TOTAL FUNDING	TRN		1,000E		E
92A.	S82	NIMITZ HIGHWAY IMPROVEMENTS, KEEHI INTERCHANGE TO PACIFIC STREET, OAHU					
		CONSTRUCTION FOR IMPLEMENTING INBOUND AM PEAK PERIOD CONTRA-FLOW LANE, INCLUDING CONSTRUCTING CROSSOVERS AND MINOR INTERSECTION WIDENING.					
		CONSTRUCTION					5,000
		TOTAL FUNDING	TRN		E		5,000E
92B.	S231	KALANIANAOLE HWY. IMPROVEMENTS, OLOMANA GOLF COURSE TO WAIMANALO BCH PARK, OAHU					
		DESIGN FOR IMPROVEMENTS TO KALANIANAOLE HIGHWAY, INCLUDING CONSTRUCTING TURNING LANES, SIDEWALKS, WHEELCHAIR RAMPS, BIKE PATHS, OR BIKE LANES, UPGRADING TRAFFIC SIGNALS, UTILITY RELOCATION, DRAINAGE IMPROVEMENTS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					800
		TOTAL FUNDING	TRN		E		160E
			TRN		N		640N
92C.	S246	INTERSTATE ROUTE H-1, CONTRAFLOW LANE, PEARL HARBOR TO KEEHI INTERCHANGES, OAHU					
		CONSTRUCTION FOR EXTENDING THE AM ZIPPER LANE FROM THE VICINITY OF RADFORD DRIVE OVERPASS TO KALIHI STREAM.					
		CONSTRUCTION					4,000
		TOTAL FUNDING	TRN		E		4,000E
92D.	S273	KAMEHAMEHA HIGHWAY INTERSECTION IMPROVEMENTS AT KUILIMA DRIVE, OAHU					
		LAND ACQUISITION FOR A LEFT TURN LANE ON KAMEHAMEHA HIGHWAY INTO KUILIMA DRIVE AND OTHER RELATED IMPROVEMENTS.					
		LAND			100		
		TOTAL FUNDING	TRN		X		100X
92E.	S274	KAMEHAMEHA HIGHWAY TRAFFIC IMPROVEMENTS, KAHALUU TO WAIMEA BAY, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE .	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN FOR IMPROVING TRAFFIC OPERATIONS AND SAFETY ALONG THIS STRETCH OF KAMEHAMEHA HIGHWAY, TO INCLUDE TURNING LANES, MODIFYING EXISTING TRAFFIC SIGNALS, CONSTRUCTING SIDEWALKS, INSTALLING SIGNS, FLASHERS AND OTHER WARNING DEVICES AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				1,000	
		TOTAL FUNDING	TRN		E	200E	
			TRN		N	800N	
92F.	S281	WAHIAWA BASEYARD IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR OFFICE BUILDING, VEHICLE STORAGE STRUCTURE, ABOVE GROUND FUEL STORAGE TANK, AND IMPROVEMENTS TO THE EXISTING FACILITY.					
		CONSTRUCTION				2,300	
		TOTAL FUNDING	TRN		E	2,300E	
92G.	SP0002	FORT WEAVER ROAD WIDENING NEAR LAULAUNUI STREET, OAHU					
		CONSTRUCTION FOR ROADWAY WIDENING, DRAINAGE IMPROVEMENTS, RELOCATION OF BUS SHELTER, BIKE PATH, HIGHWAY LIGHTS AND TRAFFIC SIGNALS, PAVEMENT MARKING AND SIGNING, AND OTHER ROADWAY RELATED ITEMS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				2,750	
		TOTAL FUNDING	TRN		E	550E	
			TRN		N	2,200N	
92H.	SP9606	INTERSTATE ROUTE H-1, LUNALILO STREET OFF-RAMP AND ON-RAMP, OAHU					
		DESIGN FOR IMPROVEMENTS IN THE WESTBOUND DIRECTION BY MODIFYING THE WEAVING MOVEMENTS BETWEEN THE LUNALILO STREET ON-RAMP AND THE VINEYARD BOULEVARD OFF-RAMP. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				2,200	
		TOTAL FUNDING	TRN		E	220E	
			TRN		N	1,980N	
92I.	SP9901	FORT WEAVER ROAD WIDENING, FARRINGTON HIGHWAY TO GEIGER ROAD, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION FOR WIDENING OF FORT WEAVER ROAD TO A SIX-LANE FACILITY FROM AAWA DRIVE TO GEIGER ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				8,000	
		TOTAL FUNDING	TRN		E	1,600E	
			TRN		N	6,400N	
92J.	S291	KANEOHE BAY DRIVE IMPROVEMENTS, VICINITY OF AUMOKU STREET TO MOKULELE DRIVE, OAHU					
		CONSTRUCTION FOR ROADWAY WIDENING, LEFT TURN STORAGE LANES, DRAINAGE FACILITIES, RETAINING WALL, SIGNING, STRIPING AND PAVEMENT MARKINGS.					
		CONSTRUCTION				4,100	
		TOTAL FUNDING	TRN		E	820E	
			TRN		N	3,280N	
92K.		KAMEHAMEHA HIGHWAY TRAFFIC IMPROVEMENTS, HYGENIC STORE TO KAALAEA STREAM, OAHU					
		PLANS AND DESIGN FOR TRAFFIC IMPROVEMENTS ON KAMEHAMEHA HIGHWAY FROM HYGENIC STORE TO KAALAEA STREAM, KAHALUU, OAHU.					
		PLANS				100	
		DESIGN				500	
		TOTAL FUNDING	TRN		E	600E	
TRN511 - HAWAII HIGHWAYS							
93.	T077	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, HAWAII					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND/OR PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		150		150	
		CONSTRUCTION		1,465		1,465	
		TOTAL FUNDING	TRN	325E		325E	
			TRN	1,290N		1,290N	
94.	T116	KAWAIHAE ROAD BYPASS, WAIMEA TO KAWAIHAE, HAWAII					
		PLANS FOR A NEW ROAD FROM WAIMEA TO KAWAIHAE, TO INCLUDE PLANNING AND ENVIRONMENTAL STUDIES.					
		PLANS		1,800			
		TOTAL FUNDING	TRN	1,800E			E

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
95.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS & HWYS., HAWAII					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN		150		150	
		CONSTRUCTION		950		950	
		TOTAL FUNDING	TRN	1,100E		1,100E	
96.	T119	HILO AND WAIMEA BASEYARDS WASTEWATER SYSTEMS, HAWAII					
		CONSTRUCTION TO PROVIDE WASTEWATER IMPROVEMENTS FOR THE WAIMEA BASEYARD NECESSARY TO MEET DEPARTMENT OF HEALTH COMPLIANCE.					
		CONSTRUCTION		60			
		TOTAL FUNDING	TRN	60E			E
97.	T120	HANDICAPPED ACCESSIBILITY FOR SIDEWALKS ON ROUTES 240 AND 270, HAWAII					
		CONSTRUCTION TO INSTALL WHEELCHAIR RAMPS AND RECONSTRUCT SIDEWALKS IN HONOKAA, HAWI, AND KAPAAU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		3,450			
		TOTAL FUNDING	TRN	690E			E
			TRN	2,760N			N
98.	T123	VOLCANO ROAD INTERSECTION IMPROVEMENTS AT HUINA ROAD, HAWAII					
		CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT VOLCANO ROAD AND HUINA ROAD. PROJECT TO PROVIDE EITHER SIGNALIZATION OR THE CONSTRUCTION OF A FULLY CHANNELIZED INTERSECTION, INCLUDING RELOCATING UTILITIES, INSTALLING SIGNS, PAVEMENT MARKERS, STRIPING, AND HIGHWAY LIGHTING AND EXTENDING A DRAINAGE CULVERT.					
		CONSTRUCTION		700			
		TOTAL FUNDING	TRN	700E			E
99.	T125	AKONI PULE HIGHWAY, REALIGNMENT AND WIDENING AT AAMAKOA GULCH, HAWAII					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		LAND ACQUISITION FOR REALIGNMENT AND WIDENING OF AKONI PULE HIGHWAY ON THE POLOLU VALLEY SIDE OF AAMAKOA GULCH, INCLUDING INSTALLING GUARDRAILS AND SIGNS.					
		LAND			200		
		TOTAL FUNDING	TRN		200E		E
100.	T127	KEAAU-PAHOA RD SHOULDER LANE CONVERSION, KEAAU BYPASS RD. TO SHOWER DR., HAWAII					
		DESIGN FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDER AND CONSTRUCTING NEW SHOULDERS ON THE INBOUND SIDE OF THE HIGHWAY.					
		DESIGN			300		
		TOTAL FUNDING	TRN		300E		E
101.	T128	KEAAU-PAHOA ROAD IMPROVEMENTS, KEAAU TO PAHOA, HAWAII					
		PLANS FOR WIDENING THE TWO LANE HIGHWAY TO FOUR LANES OR ALTERNATIVE ALIGNMENTS IN THIS CORRIDOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			2,000		
		TOTAL FUNDING	TRN		400E		E
			TRN		1,600N		N
102.	T129	SADDLE ROAD IMPROVEMENTS, HAWAII					
		DESIGN FOR WIDENING AND/OR REALIGNING THE EXISTING TWO-LANE HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			5,625		
		TOTAL FUNDING	TRN		1,125E		E
			TRN		4,500N		N
103.	T130	TRAFFIC CONGESTION MITIGATION AT VARIOUS LOCATIONS, HAWAII					
		PLANS FOR FEASIBILITY ANALYSIS, TRAFFIC STUDIES, AND CONGESTION MITIGATION ALTERNATIVES FOR REGIONAL TRAFFIC CONGESTION ON EXISTING HIGHWAY FACILITIES ON HAWAII.					
		PLANS			100		
		TOTAL FUNDING	TRN		100E		E
104.	T131	KUAKINI HIGHWAY WIDENING, HENRY STREET TO KAMEHAMEHA III ROAD, HAWAII					
		PLANS FOR WIDENING KUAKINI HIGHWAY FROM 2 TO 4 LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS				2,000	
		TOTAL FUNDING	TRN		E	400E	



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN		N	1,600N	
105.	T132	VOLCANO ROAD INTERSECTION IMPROVEMENTS AT KULANI ROAD, HAWAII					
		DESIGN FOR LEFT TURN LANES AT KULANI ROAD INTERSECTION.					
		DESIGN				400	
		TOTAL FUNDING	TRN		E	400E	
106.	T11	PUAINAKO STREET EXTENSION, KOMOHANA STREET TO COUNTRY CLUB ROAD, HAWAII					
		CONSTRUCTION FOR A NEW TWO-LANE ROADWAY FROM KOMOHANA STREET TO THE INTERSECTION OF COUNTRY CLUB ROAD AND KAUMANA DRIVE. (SPECIAL FUNDS FROM DUTY FREE).					
		CONSTRUCTION		7,500			
		TOTAL FUNDING	TRN	2,500B			B
			TRN	5,000N			N
106A.	T126	KUAKINI HWY, ROADWAY & DRAINAGE IMPROV. VICINITY OF KAMEHAMEHA III RD., HAWAII					
		CONSTRUCTION FOR BUILDING UP PAVEMENT CROSS SLOPE TO IMPROVE DRAINAGE AND OTHER INCIDENTAL IMPROVEMENTS.					
		CONSTRUCTION				975	
		TOTAL FUNDING	TRN		E	975E	
<b>TRN531 - MAUI HIGHWAYS</b>							
107.	V60	KIHEI-UPCOUNTRY HIGHWAY, MAUI					
		DESIGN FOR A NEW 2-LANE HIGHWAY FROM KIHEI TO UPCOUNTRY MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		4,000			
		TOTAL FUNDING	TRN	800E			E
			TRN	3,200N			N
108.	V63	KAHULUI AIRPORT ACCESS ROAD, MAUI					
		DESIGN AND CONSTRUCTION FOR A PORTION OF THE NEW ACCESS ROAD TO KAHULUI AIRPORT FROM THE VICINITY OF PUUNENE AVENUE TO HANA HIGHWAY. INCLUDES AN AT-GRADE INTERSECTION AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, HIGHWAY LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. (SPECIAL FUNDS FROM DUTY FREE).					
		DESIGN		500			
		CONSTRUCTION				40,000	
		TOTAL FUNDING	TRN	500B			B
			TRN		E	40,000E	

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
109.	V083	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS & HIGHWAYS, MAUI					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN					100
		CONSTRUCTION					900
		TOTAL FUNDING	TRN		E		1,000E
110.	V084	HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI					
		CONSTRUCTION FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER ROAD STRUCTURES ON HANA HIGHWAY.					
		CONSTRUCTION					1,500
		TOTAL FUNDING	TRN		E		1,500E
111.	V86	HANA HIGHWAY IMPROVEMENTS AT BALDWIN AVENUE, MAUI					
		LAND ACQUISITION AND DESIGN FOR IMPROVEMENTS IN THE VICINITY OF THE HANA HIGHWAY AND BALDWIN AVENUE INTERSECTION, INCLUDING MODIFYING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, REPLACING OF STREET PARKING, SIDEWALK RECONSTRUCTION, AND OTHER IMPROVEMENTS.					
		LAND				100	
		DESIGN				500	
		TOTAL FUNDING	TRN		600E		E
112.	V87	TRAFFIC CONGESTION MITIGATION AT VARIOUS LOCATIONS, MAUI					
		PLANS FOR FEASIBILITY ANALYSIS, TRAFFIC STUDIES, AND CONGESTION MITIGATION ALTERNATIVES FOR REGIONAL TRAFFIC CONGESTION ON EXISTING HIGHWAY FACILITIES ON MAUI.					
		PLANS				100	
		TOTAL FUNDING	TRN		100E		E
113.	V88	KAHEKILI HIGHWAY IMPROVEMENTS AT WAIHEE TOWN, MAUI					
		DESIGN TO CONSTRUCT SIDEWALKS AND CURB RAMPS FOR ADA COMPLIANCE.					
		DESIGN					200
		TOTAL FUNDING	TRN		E		200E

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
114.	V89	HANA HIGHWAY IMPROVEMENTS, UAKEA ROAD TO KEAWA PLACE, MAUI					
		DESIGN FOR WIDENING THE EXISTING ROADWAY AND CONSTRUCT SAFETY IMPROVEMENTS.					
		DESIGN					150
		TOTAL FUNDING	TRN		E		150E
115.	V90	HALEAKALA HIGHWAY IMPROVEMENTS IN THE VICINITY OF HANA HIGHWAY, MAUI					
		DESIGN AND CONSTRUCTION FOR HALEAKALA HIGHWAY WIDENING AND INTERSECTION IMPROVEMENTS IN THE VICINITY OF HANA HIGHWAY.					
		DESIGN			50		
		CONSTRUCTION			450		
		TOTAL FUNDING	TRN		500E		E
116.	V91	PIILANI HIGHWAY WIDENING, MOKULELE HIGHWAY TO KILOHANA DRIVE, MAUI					
		CONSTRUCTION FOR WIDENING THE EXISTING TWO-LANE ROADWAY TO FOUR LANES FROM MOKULELE HIGHWAY TO KILOHANA DRIVE, INCLUDING CONSTRUCTION OF NEW SHOULDERS, RELOCATING/MODIFYING TRAFFIC SIGNALS, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			4,000		
		TOTAL FUNDING	TRN		3,000E		E
			TRN		1,000S		S
117.	VP0101	PIILANI HIGHWAY EXTENSION, MAUI					
		DESIGN FOR THE EXTENSION OF PIILANI HIGHWAY FROM WAILEA TO ULUPALAKUA.					
		DESIGN					1,000
		TOTAL FUNDING	TRN		E		1,000E
118.	VP0102	PIILANI HIGHWAY WIDENING, MAUI					
		PLANS AND DESIGN FOR THE WIDENING OF PIILANI HIGHWAY FROM WAILEA TO MOKULELE HIGHWAY FROM TWO TO FOUR LANES.					
		PLANS					200
		DESIGN					800
		TOTAL FUNDING	TRN		E		1,000E
119.	VP0103	HONOAPILANI HIGHWAY WIDENING, MAUI					
		PLANS AND DESIGN FOR THE WIDENING OF HONOAPILANI HIGHWAY FROM LAHAINALUNA ROAD TO WAILUKU FROM TWO TO FOUR LANES.					
		PLANS			200		
		DESIGN			800		9,000
		TOTAL FUNDING	TRN		1,000E		9,000E

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
120.	VP0104	HONOAPIILANI HIGHWAY WIDENING, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM LAHAINALUNA ROAD TO SOUTH OF FRONT STREET.					
		PLANS		300			
		DESIGN		400			
		CONSTRUCTION		2,500			
		TOTAL FUNDING	TRN	3,200E			E
120A.	V073	PUUNENE AVE./MOKULELE HWY. WIDENING, KUIHELANI HWY. TO PIILANI HWY., MAUI					
		CONSTRUCTION FOR THE WIDENING OF PUUNENE AVENUE AND MOKULELE HIGHWAY FROM TWO LANES TO FOUR LANES, PHASE 1A. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				30,500	
		TOTAL FUNDING	TRN		E	6,100E	
			TRN		N	24,400N	
120B.	V075	HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI					
		CONSTRUCTION TO REMOVE OVERHANGING, PROTRUDING, AND/OR UNSTABLE ROCKS FROM THE SLOPES ABOVE HANA HIGHWAY.					
		CONSTRUCTION				2,000	
		TOTAL FUNDING	TRN		E	2,000E	
120C.	V92	HONOAPIILANI HIGHWAY SHORELINE IMPROVEMENTS, VICINITY OF OLOWALU, MAUI					
		DESIGN FOR SHORELINE IMPROVEMENTS TO INCLUDE SHORELINE EROSION MITIGATION AND ROADWAY WORK.					
		DESIGN				300	
		TOTAL FUNDING	TRN		E	300E	
TRN541 - MOLOKAI HIGHWAYS							
121.	W10	MOLOKAI BASEYARD, MOLOKAI					
		CONSTRUCTION FOR A MAINTENANCE BASEYARD FACILITY ON MOLOKAI. PROJECT TO INCLUDE AN OFFICE BUILDING, STORAGE SHED, MOTOR VEHICLE AND EQUIPMENT SHED, MECHANICS SHOP AND SITE IMPROVEMENTS.					
		CONSTRUCTION		3,500			
		TOTAL FUNDING	TRN	3,500E			E
122.	W11	KAMEHAMEHA V HIGHWAY, KAWELA BRIDGE REPLACEMENT, MOLOKAI					
		DESIGN FOR REPLACEMENT OF KAWELA BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN					665
		TOTAL FUNDING	TRN		E		135E
			TRN		N		530N
<b>TRN561 - KAUAI HIGHWAYS</b>							
123.	X06	KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI					
		LAND ACQUISITION FOR WIDENING OF KAUMUALII HIGHWAY, PHASE I, LIHUE TO VICINITY OF KIPU, FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					10,000
		TOTAL FUNDING	TRN		E		2,000E
			TRN		N		8,000N
124.	X112	MISC. TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS & HWYS., KAUAI					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN					100
		CONSTRUCTION					865
		TOTAL FUNDING	TRN		E		965E
125.	X118	KUAMOO ROAD, RETAINING WALL IN THE VICINITY OF MP 1.1, KAUAI					
		DESIGN FOR REPLACING AN EXISTING WALL.					
		DESIGN			150		
		TOTAL FUNDING	TRN		150E		E
126.	X119	TRAFFIC CONGESTION MITIGATION AT VARIOUS LOCATIONS, KAUAI					
		PLANS FOR FEASIBILITY ANALYSIS, TRAFFIC STUDIES, AND CONGESTION MITIGATION ALTERNATIVES FOR REGIONAL TRAFFIC CONGESTION ON EXISTING HIGHWAY FACILITIES ON KAUAI.					
		PLANS			100		
		TOTAL FUNDING	TRN		100E		E
127.	X120	KAUMUALII HIGHWAY, KUHIO HIGHWAY, AND KUAMOO ROAD RETAINING WALLS, KAUAI					
		DESIGN FOR CONSTRUCTION AND/OR RECONSTRUCTING OF RETAINING WALLS AND OTHER APPURTENANT IMPROVEMENTS AT VARIOUS LOCATIONS.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN					250
		TOTAL FUNDING	TRN		E		250E
128.	X100	KUHIO HIGHWAY RETAINING WALLS AT LUMAHAI AND WAINIHA, KAUAI					
		DESIGN FOR RETAINING WALLS TO PREVENT SLIPPAGE AND EROSION.					
		DESIGN			500		
		TOTAL FUNDING	TRN		500E		E
128A.	X116	TEMPORARY KAPAA BYPASS ROAD WAIPOULI TO HAUAAALA ROAD, KAUAI					
		CONSTRUCTION FOR THE TEMPORARY KAPAA BYPASS ROAD, INCLUDING EXTENDING THE BYPASS ROAD TO KUHIO HIGHWAY IN THE VICINITY OF HAUAAALA ROAD.					
		CONSTRUCTION					2,500
		TOTAL FUNDING	TRN		E		2,500E
128B.	X121	KUHIO HIGHWAY, REPLACEMENT OR STRENGTHENING OF WAINIHA BRIDGES, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR REPLACEMENT OR STRENGTHENING OF WAINIHA BRIDGES NOS. 1, 2, AND 3.					
		LAND					225
		DESIGN					775
		CONSTRUCTION					4,100
		TOTAL FUNDING	TRN		E		5,100E
128C.		KAPULE HIGHWAY/KAANA STREET INTERSECTION IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS ON KAPULE HIGHWAY AND KAANA STREET NEAR THE LIHUE AIRPORT. WORK INCLUDES ROAD WIDENING, TURN LANES, TRAFFIC SIGNAL SYSTEM, AND DRAINAGE SYSTEM.					
		DESIGN					20
		CONSTRUCTION					980
		TOTAL FUNDING	TRN		E		1,000E

## TRN595 - HIGHWAYS ADMINISTRATION

129. X91 PEDESTRIAN FACILITIES AND ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE

DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING CURB RAMPS AND BUS STOPS ON STATE HIGHWAYS AND UPGRADING THE HIGHWAYS DIVISION BUILDING FACILITIES TO MEET COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN		215			
		CONSTRUCTION		2,000		1,000	
		TOTAL FUNDING	TRN	615E		200E	
			TRN	1,600N		800N	
130.	X96	CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE					
		LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS. ALSO, TO PROVIDE THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.					
		LAND		200			
		TOTAL FUNDING	TRN	200E			E
131.	X97	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE					
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS AND CULVERTS AT VARIOUS LOCATIONS.					
		CONSTRUCTION		1,500		1,000	
		TOTAL FUNDING	TRN	1,500E		1,000E	
132.	X98	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		375		375	
		CONSTRUCTION		2,500		2,500	
		TOTAL FUNDING	TRN	875E		875E	
			TRN	2,000N		2,000N	
133.	X221	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS HIGHWAY LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REPLACING EXISTING TRAFFIC SIGNAL SYSTEMS; PROVIDING INTERCONNECTION OF SIGNALIZED INTERSECTIONS; UPGRADING EXISTING TRAFFIC SIGNAL SYSTEMS TO MEET CURRENT ADA STANDARDS; AND INSTALLING CLOSED CIRCUIT TELEVISION FOR THE FREEWAY MANAGEMENT SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		300			
		CONSTRUCTION		2,000			
		TOTAL FUNDING	TRN	700E			E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
			TRN	1,600N			N
134.	X222	SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR SEISMIC RETROFIT OF VARIOUS EXISTING BRIDGES ON OAHU AND HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		500			
		CONSTRUCTION		9,000		9,000	
		TOTAL FUNDING	TRN	1,900E		1,800E	
			TRN	7,600N		7,200N	
135.	X225	HIGHWAYS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECTS RELATED POSITIONS.					
		PLANS		1		1	
		LAND		1		1	
		DESIGN		1		1	
		CONSTRUCTION		18,997		18,997	
		TOTAL FUNDING	TRN	13,000E		13,000E	
			TRN	6,000N		6,000N	
136.	X226	CLOSEOUT OF HIGHWAY CONSTRUCTION PROJECTS, STATEWIDE					
		CONSTRUCTION FOR COMPLETION OF OUTSTANDING CONSTRUCTION PROJECTS FOR POSTING OF AS-BUILT PLANS, OUTSTANDING UTILITY BILLINGS, AND PAYMENTS TO OTHERS FOR PROJECT RELATED WORK.					
		CONSTRUCTION		250		250	
		TOTAL FUNDING	TRN	250E		250E	
137.	X227	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE					
		PLANS FOR STUDIES TO DETERMINE ROCKFALL/ SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE.					
		PLANS		700			
		TOTAL FUNDING	TRN	700E			E
138.	S293	ALIIAIMOKU BUILDING, AIR CONDITIONING SYSTEM REPLACEMENT, OAHU					



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION FOR THE REPLACEMENT OF THE AIR CONDITIONING SYSTEM AT THE ALIIAIMOKU BUILDING, INCLUDING AIR HANDLING SYSTEM, FLOOR REINFORCEMENT, AND REMOVING AND/OR RECONSTRUCTING WALLS.					
		CONSTRUCTION		1,600			
		TOTAL FUNDING	TRN	1,600E			E
139.	X228	ALIIAIMOKU BUILDING, IMPROVEMENTS TO THE FIRST FLOOR AND LOBBY AREA, OAHU					
		DESIGN AND CONSTRUCTION FOR RELOCATING EXISTING OFFICES ON THE FIRST FLOOR AND IMPROVEMENTS TO THE LOBBY AREA OF THE ALIIAIMOKU BUILDING.					
		DESIGN		40			
		CONSTRUCTION		220			
		TOTAL FUNDING	TRN	260E			E
139A.	X229	ENVIRONMENTAL REMEDIATION AND/OR COMPLIANCE ON VARIOUS HWYS. & FACILITIES					
		PLANS, DESIGN, AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION AND/OR COMPLIANCE MEASURES ON STATE HIGHWAYS AND FACILITIES, INCLUDING BASEYARDS, STATEWIDE.					
		PLANS				500	
		DESIGN				500	
		CONSTRUCTION				1,000	
		TOTAL FUNDING	TRN		E	2,000E	

## D. ENVIRONMENTAL PROTECTION

## HTH840 - ENVIRONMENTAL MANAGEMENT

1. 840201 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTE-WATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342-D HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		12,563	12,563
TOTAL FUNDING	HTH	2,094C	2,094C
	HTH	10,469N	10,469N

2. 840202 SAFE DRINKING WATER REVOLVING FUND, STATEWIDE

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS TO COMPLY WITH THE SAFE DRINKING WATER ACT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		CONSTRUCTION		9,308		9,308	
		TOTAL FUNDING	HTH	1,551C		1,551C	
			HTH	7,757N		7,757N	

## LNR402 - FORESTS AND WILDLIFE RESOURCES

## 3. D0201 SOUTH-WEST MAUNA KEA FIRE BREAK, HAWAII

PLANS, LAND ACQUISITION, AND EQUIPMENT TO CONSTRUCT SIX MILES OF FIRE BREAK TWENTY FEET WIDE BETWEEN AHUMOA AND MAUNA KEA STATE PARK. THE FIRE BREAK IS NEEDED FOR THE PROTECTION OF THE PALILA, A LISTED ENDANGERED SPECIES, NESTING AREA ON THE ISLAND.

PLANS			8
LAND			12
EQUIPMENT			36
TOTAL FUNDING	LNR	C	56C

## 4. D0203 WAIANAE KAI FOREST RESERVE FIRE BREAK, OAHU

PLANS, DESIGN, AND CONSTRUCTION TO ESTABLISH FIRE BREAK AND REMOVE INVASIVE FLAMMABLE GRASSES AND REFOREST WITH NATIVE SPECIES.

PLANS			10
DESIGN			10
CONSTRUCTION			45
TOTAL FUNDING	LNR		65C
			60
			60C

## LNR404 - WATER RESOURCES

## 4A. G5516L PEARL HARBOR DEEP MONITOR WELL, OAHU

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A DEEP MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.

PLANS			10
LAND			10
DESIGN			40
CONSTRUCTION			496
EQUIPMENT			50
TOTAL FUNDING	LNR	C	606C

## 4B. G5516M WAILUKU DEEP MONITOR WELL, MAUI

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A DEEP MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS					10
		LAND					10
		DESIGN					40
		CONSTRUCTION					518
		EQUIPMENT					50
		TOTAL FUNDING	LNR		C		628C
4C.	G5516N	WAIMALU DEEP MONITOR WELL, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A DEEP MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		PLANS					10
		LAND					10
		DESIGN					40
		CONSTRUCTION					410
		EQUIPMENT					50
		TOTAL FUNDING	LNR		C		520C
<b>LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT</b>							
5.	J00	ADA PUBLIC ACCESSIBILITY AT DLNR FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION TO PROVIDE PUBLIC ACCESSIBILITY AT DLNR FACILITIES.					
		DESIGN		3,000			
		CONSTRUCTION		7,000			
		TOTAL FUNDING	LNR	10,000C			C
6.	J0201	DLNR ENVIRONMENTAL RISK ASSESSMENT, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE PREPARATION OF STATEWIDE RISK ASSESSMENT AND MANAGEMENT PLAN, DESIGN AND CONSTRUCTION OF STANDARDIZED WARNING AND INFORMATIONAL SIGNAGE AND OTHER MITIGATION MEASURES.					
		PLANS		200			
		DESIGN		100			
		CONSTRUCTION					500
		TOTAL FUNDING	LNR	300C			500C
7.	950026	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS		1,560			1,560
		TOTAL FUNDING	LNR	1,560C			1,560C
7A.		DLNR ENVIRONMENTAL COMPLIANCE ASSESSMENT, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F

PLANS TO CONDUCT A MULTI-MEDIA  
ENVIRONMENTAL COMPLIANCE ASSESSMENT  
OF SELECTED DLNR LANDS AND/OR FACILITIES  
TO DETERMINE ENVIRONMENTAL HAZARD  
POTENTIAL AND RECOMMEND MITIGATIVE  
MEASURES IF NECESSARY.

PLANS

TOTAL FUNDING

LNR

C

200

200C

## E. HEALTH

## HTH101 - TUBERCULOSIS CONTROL

1. 101201 LANAKILA HEALTH CENTER, TB CONTROL PROGRAM SPACE, NEW X-RAY EQUIPMENT, OAHU

EQUIPMENT FOR THE INSTALLATION OF A NEW  
DIGITAL X-RAY UNIT AND ACCESSORIES TO  
ALLOW STAFF TO READ AND STORE THE X-RAY  
INFORMATION.

EQUIPMENT

TOTAL FUNDING

AGS

425

425C

C

## HTH501 - DEVELOPMENTAL DISABILITIES

2. 501202 WAIMANO TRAINING SCHOOL & HOSPITAL, UPGRADE FIRE WATERLINE & HYDRANTS, OAHU

DESIGN AND CONSTRUCTION TO UPGRADE THE  
FIRE WATERLINE SYSTEM AND FIRE HYDRANTS  
ON THE GROUNDS OF THE WAIMANO TRAINING  
SCHOOL AND HOSPITAL.

DESIGN

CONSTRUCTION

TOTAL FUNDING

AGS

25

250

275C

C

## HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM

- 2A. 730201 KAUMAKANI MEDICOM FACILITY, KAUAI

DESIGN AND CONSTRUCTION TO INSTALL A  
NEW MEDICOM SITE IN KAUMAKANI.

DESIGN

CONSTRUCTION

TOTAL FUNDING

AGS

C

52

250

302C

## HTH595 - HEALTH RESOURCES ADMINISTRATION

3. P10010 HALE MAKUA EXPANSION, MAUI

PLANS, DESIGN, CONSTRUCTION, AND  
EQUIPMENT FOR THE CONSTRUCTION OF A NEW  
WING AS AN ADDITION TO HALE MAKUA,  
KAHULUI; EQUIPMENT AND APPURTENANCES.  
THIS PROJECT QUALIFIES AS A GRANT,  
PURSUANT TO CHAPTER 42F, HRS.

PLANS

DESIGN

CONSTRUCTION

EQUIPMENT

20

62

548

182

88

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	HTH	630C		270C	
4.	P10011	ST. FRANCIS RENAL DIALYSIS CENTER, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION FOR A NEW DIALYSIS FACILITY; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS		50			
		DESIGN		25			
		CONSTRUCTION		435			
		EQUIPMENT		240			
		TOTAL FUNDING	HTH	750C			C
5.	P10012	WAIKIKI HEALTH CENTER, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A WAIKIKI HEALTH CENTER FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS		449			
				0 <sup>1</sup>			
		LAND		2,550			
				0 <sup>1</sup>			
		DESIGN		500			
				0 <sup>1</sup>			
		CONSTRUCTION		1,500			
				0 <sup>1</sup>			
		EQUIPMENT		1			
				0 <sup>1</sup>			
		TOTAL FUNDING	HTH	5,000C			C
				0 <sup>1</sup>			
6.	P10013	MOLOKAI GENERAL HOSPITAL, RENOVATIONS AND IMPROVEMENTS, MOLOKAI					
		PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO CORRECT VARIOUS CODE AND ADA DEFICIENCIES AT THE MOLOKAI GENERAL HOSPITAL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS				100	
		DESIGN		50		300	
		CONSTRUCTION		450		100	
		TOTAL FUNDING	HTH	500C		500C	
6A.	J.	WALTER CAMERON CENTER, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN INFANT AND CHILD CARE FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS				10	
		DESIGN				54	
		CONSTRUCTION				536	
		TOTAL FUNDING	HTH		C	600C	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
HTH210 - HAWAII HEALTH SYSTEMS CORPORATION							
7. HHSC29 MALUHIA HOSPITAL, BLAST CHILLER/BLAST FREEZER, OAHU							
CONSTRUCTION AND EQUIPMENT TO INSTALL BLAST CHILLER/BLAST FREEZER INTO THE KITCHEN PRODUCTION AREA.							
CONSTRUCTION EQUIPMENT							
TOTAL FUNDING HTH C							
8. HHSC31 MALUHIA HOSPITAL, WALK-IN REFRIGERATOR, OAHU							
CONSTRUCTION FOR A NEW WALL, CEILING AND FLOOR PANELS MADE OF ALUMINUM OR STAINLESS STEEL WITH NEW REFRIGERATION UNIT INSIDE BOX.							
CONSTRUCTION							
TOTAL FUNDING HTH C							
9. HHSC03 HILO MEDICAL CENTER, FIRE SPRINKLER, HAWAII							
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM.							
PLANS							
DESIGN							
CONSTRUCTION							
EQUIPMENT							
TOTAL FUNDING HTH							
10. HHSC04 HILO MEDICAL CENTER, ACUTE HOSPITAL FIRE ALARM SYSTEM, HAWAII							
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF A FIRE ALARM SYSTEM FOR THE ACUTE HOSPITAL.							
PLANS							
DESIGN							
CONSTRUCTION							
EQUIPMENT							
TOTAL FUNDING HTH							
11. HHSC08 HILO MEDICAL CENTER, ADA REQUIREMENTS, HAWAII							
CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF GRAB BARS IN ALL PATIENT BATHROOMS IN THE ACUTE HOSPITAL.							
CONSTRUCTION							
EQUIPMENT							
TOTAL FUNDING HTH							
12. HHSC13 HILO MEDICAL CENTER, AUTOPSY/MORGUE/BODY PREPARATION AND HOLDING AREA, HAWAII							

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE THE AUTOPSY/ MORGUE/BODY PREPARATION AREA AND HOLDING AREA TO MEET REQUIRED GUIDELINES FOR FORMALDEHYDE USE THAT REQUIRE 14 AIR EXCHANGES/HOUR AND TO ENCLOSE MORGUE AREA TO CONTAIN ODOR AND EXHAUST OUTSIDE.					
		PLANS			5		
		DESIGN			10		
		CONSTRUCTION			80		
		EQUIPMENT			20		
		TOTAL FUNDING	HTH		115C		C
13.	HHSC23	HILO MEDICAL CENTER, ELECTRICAL UPGRADE FOR ACUTE HOSPITAL, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO UPGRADE THE ELECTRICAL SYSTEM IN THE ACUTE HOSPITAL.					
		PLANS					20
		DESIGN					50
		CONSTRUCTION					500
		EQUIPMENT					130
		TOTAL FUNDING	HTH		C		700C
14.	HHSC32	HILO MEDICAL CENTER, VINYL SHEET FLOORING FOR PHARMACY, OB-LABOR & DELIVERY					
		CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF VINYL SHEET FLOORING FOR PHARMACY AND OB-LABOR AND DELIVERY ON TOP OF EXISTING FLOORING AT THE HILO MEDICAL CENTER, HAWAII.					
		CONSTRUCTION					50
		EQUIPMENT					75
		TOTAL FUNDING	HTH		C		125C
15.	HHSC37	HILO MEDICAL CENTER, SEPARATE UTILITY SERVICE FOR ECD, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF THE UTILITIES - ELECTRICAL, WATER, AND TELEPHONE.					
		PLANS					15
		DESIGN					40
		CONSTRUCTION					190
		EQUIPMENT					220
		TOTAL FUNDING	HTH		C		465C
16.	HHSC07	KOHALA HOSPITAL, FIRE ALARM SYSTEM, HAWAII					
		PLANS AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING FIRE ALARM SYSTEM.					
		PLANS			25		
		CONSTRUCTION			200		
		TOTAL FUNDING	HTH		225C		C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
17.		HHSC14 KOHALA HOSPITAL, RE-ROOFING OF HOSPITAL, HAWAII					
		DESIGN AND CONSTRUCTION TO REMOVE AND REPLACE THE EXISTING METAL ROOFING, GUTTERS, FLASHING, CURBS, EQUIPMENT SUPPORTS, AND WOOD FASCIA.					
		DESIGN			50		
		CONSTRUCTION			1,050		
		TOTAL FUNDING	HTH		1,100C		C
18.		HHSC20 KOHALA HOSPITAL, UPGRADE OF ELECTRICAL DISTRIBUTION SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL DISTRIBUTION SYSTEM.					
		DESIGN			50		
		CONSTRUCTION			250		
		TOTAL FUNDING	HTH		300C		C
19.		HHSC21 KOHALA HOSPITAL, NURSE CALL SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION TO INSTALL A NURSE CALL SYSTEM.					
		DESIGN			10		
		CONSTRUCTION			90		
		TOTAL FUNDING	HTH		100C		C
20.		HHSC22 KOHALA HOSPITAL, FIRE SPRINKLER SYSTEM AND UPGRADE STANDPIPE, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION TO INSTALL A FIRE SPRINKLER SYSTEM AND UPGRADE THE HOSPITAL FIRE LINE STANDPIPE.					
		PLANS					10
		DESIGN					55
		CONSTRUCTION					265
		TOTAL FUNDING	HTH		C		330C
21.		HHSC11 HALE HOOLA HAMAKUA, UPGRADE AIR CONDITIONING SYSTEM, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UPGRADE OF THE AIR CONDITIONING SYSTEM.					
		PLANS			2		
		DESIGN			10		
		CONSTRUCTION			50		
		EQUIPMENT			80		
		TOTAL FUNDING	HTH		142C		C
22.		HHSC17 KAU HOSPITAL, FIRE ALARM SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION TO INSTALL A FIRE ALARM SYSTEM.					
		DESIGN			24		
		CONSTRUCTION			118		
		TOTAL FUNDING	HTH		142C		C
23.		HHSC18 KAU HOSPITAL, ELECTRICAL UPGRADE, HAWAII					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO UPGRADE HOSPITAL ELECTRICAL SYSTEM.					
		PLANS			5		
		DESIGN			15		
		CONSTRUCTION			80		
		EQUIPMENT			159		
		TOTAL FUNDING	HTH		259C		C
24.	HHSC19	KAU HOSPITAL, FIRE SPRINKLER, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM.					
		DESIGN			33		
		CONSTRUCTION			226		
		TOTAL FUNDING	HTH		259C		C
25.	HHSC26	KONA COMMUNITY HOSPITAL, MED-SURGE RENOVATION, HAWAII					
		DESIGN FOR THE RENOVATION OF THE MED-SURGE PATIENT ROOMS AND NURSES STATION.					
		DESIGN					100
		TOTAL FUNDING	HTH		C		100C
26.	HHSC15	MAUI MEMORIAL MEDICAL CENTER, NURSE CALL SYSTEM, MAUI					
		DESIGN AND CONSTRUCTION FOR A NURSE CALL SYSTEM.					
		DESIGN			98		
		CONSTRUCTION			1,103		
		TOTAL FUNDING	HTH		1,201C		C
27.	HHSC35	MAUI MEMORIAL MEDICAL CENTER, FIRE SPRINKLER SYSTEM, MAUI					
		DESIGN AND CONSTRUCTION FOR A FIRE SPRINKLER SYSTEM IN THE LAUNDRY DEPARTMENT.					
		DESIGN					39
		CONSTRUCTION					334
		TOTAL FUNDING	HTH		C		373C
28.	HHSC36	MAUI MEMORIAL MEDICAL CENTER, ADA SIGNAGE, MAUI					
		DESIGN AND CONSTRUCTION TO INSTALL ADA SIGNAGE AS REQUIRED FOR A HOSPITAL.					
		DESIGN					76
		CONSTRUCTION					768
		TOTAL FUNDING	HTH		C		844C
29.	HHSC05	LANAI COMMUNITY HOSPITAL, FIRE SPRINKLER SYSTEM, LANAI					
		DESIGN AND CONSTRUCTION FOR A FIRE SPRINKLER SYSTEM.					
		DESIGN			33		
		CONSTRUCTION			226		
		TOTAL FUNDING	HTH		259C		C
30.	HHSC06	LANAI COMMUNITY HOSPITAL, FIRE ALARM SYSTEM, LANAI					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR A NEW ADDRESSABLE FIRE ALARM SYSTEM.					
		DESIGN			24		
		CONSTRUCTION			118		
		TOTAL FUNDING	HTH		142C		C
31.	HHSC16	LANAI COMMUNITY HOSPITAL, ELECTRICAL UPGRADES, LANAI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM.					
		DESIGN			33		
		CONSTRUCTION			226		
		TOTAL FUNDING	HTH		259C		C
32.	HHSC12	KULA HOSPITAL, ELECTRICAL UPGRADES, MAUI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM.					
		DESIGN			39		
		CONSTRUCTION				334	
		TOTAL FUNDING	HTH		39C	334C	
33.	HHSC01	KAUAI VETERANS MEMORIAL HOSPITAL, FIRE SPRINKLER SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM.					
		DESIGN			39		
		CONSTRUCTION			334		
		TOTAL FUNDING	HTH		373C		C
34.	HHSC02	KAUAI VETERANS MEMORIAL HOSPITAL, FIRE ALARM SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING FIRE ALARM SYSTEM.					
		DESIGN			59		
		CONSTRUCTION			550		
		TOTAL FUNDING	HTH		609C		C
35.	HHSC10	KAUAI VETERANS MEMORIAL HOSPITAL, UPGRADE OF MEDICAL PIPE GASES, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF MEDICAL PIPE GASES.					
		DESIGN			33		
		CONSTRUCTION			226		
		TOTAL FUNDING	HTH		259C		C
36.	HHSC24	KAUAI VETERANS MEMORIAL HOSPITAL, NURSE CALL SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION TO INSTALL A NURSE CALL SYSTEM.					
		DESIGN					11
		CONSTRUCTION					88
		TOTAL FUNDING	HTH		C		99C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
37.	HHSC25	KAUAI VETERANS MEMORIAL HOSPITAL, CORRECT ADA ACCESS DEFICIENCIES, KAUAI					
		DESIGN AND CONSTRUCTION TO CORRECT ACCESS REQUIREMENTS TO COMPLY WITH ADA CODES.					
		DESIGN					47
		CONSTRUCTION					442
		TOTAL FUNDING	HTH		C		489C
38.	HHSC33	KAUAI VETERANS MEMORIAL HOSPITAL, FUEL TANK REPLACEMENT, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL AND REPLACEMENT OF THE FUEL TANK.					
		DESIGN					33
		CONSTRUCTION					226
		TOTAL FUNDING	HTH		C		259C
39.	HHSC09	SAMUEL MAHELONA MEMORIAL HOSPITAL, FIRE ALARM SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING FIRE ALARM SYSTEM.					
		DESIGN			47		
		CONSTRUCTION			442		
		TOTAL FUNDING	HTH		489C		C
40.	HHSC27	SAMUEL MAHELONA MEMORIAL HOSPITAL, FIRE SPRINKLER SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM.					
		DESIGN					33
		CONSTRUCTION					226
		TOTAL FUNDING	HTH		C		259C
41.	HHSC28	SAMUEL MAHELONA MEMORIAL HOSPITAL, EMERGENCY GENERATORS, KAUAI					
		DESIGN AND CONSTRUCTION TO INSTALL AN EMERGENCY GENERATOR.					
		DESIGN					39
		CONSTRUCTION					334
		TOTAL FUNDING	HTH		C		373C
42.	HHSC30	SAMUEL MAHELONA MEMORIAL HOSPITAL, ADA ACCESS DEFICIENCIES, KAUAI					
		DESIGN AND CONSTRUCTION TO CORRECT ADA DEFICIENCIES.					
		DESIGN					39
		CONSTRUCTION					334
		TOTAL FUNDING	HTH		C		373C
43.	HHSC34	SAMUEL MAHELONA MEMORIAL HOSPITAL, DIETARY UPGRADES, KAUAI					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR THE DIETARY UPGRADES.					
		DESIGN					39
		CONSTRUCTION					334
		TOTAL FUNDING	HTH		C		373C
43A.	HHSC38	MAUI MEMORIAL MEDICAL CENTER, HOSPITAL EXPANSION PROJECT, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE MAUI MEMORIAL MEDICAL CENTER.					
		DESIGN					3,500
		CONSTRUCTION					32,079
		EQUIPMENT					2,421
		TOTAL FUNDING	HTH		C		38,000C
43B.		MAUI MEMORIAL MEDICAL CENTER, DIETARY UPGRADES, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR DIETARY UPGRADES.					
		PLANS					1
		DESIGN					125
		CONSTRUCTION					623
		EQUIPMENT					1
		TOTAL FUNDING	HTH		C		750C
HTH420 - ADULT MENTAL HEALTH - OUTPATIENT							
43C.		MENTAL HEALTH KOKUA, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE ACQUISITION AND RENOVATION OF A FACILITY IN WAILUKU, MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND					498
							0 <sup>1</sup>
		DESIGN					±
							0 <sup>1</sup>
		CONSTRUCTION					±
							0 <sup>1</sup>
		TOTAL FUNDING	HTH		C		500C
							0 <sup>1</sup>
HTH430 - ADULT MENTAL HEALTH - INPATIENT							
43D.	430201	HAWAII STATE HOSPITAL, RENOVATE GUENSBURG BUILDING, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF GUENSBURG BUILDING TO ACCOMMODATE THE OVERFLOW OF PATIENTS.					
		DESIGN					50
		CONSTRUCTION					350
		TOTAL FUNDING	AGS		C		400C
43E.	430202	HAWAII STATE HOSPITAL, DURESS SYSTEM EXPANSION, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION TO EXPAND THE DURESS SYSTEM INTO AREAS THAT HAVE BEEN CONVERTED TO PATIENT AREAS.					
		DESIGN					27
		CONSTRUCTION					233
		TOTAL FUNDING	AGS		C		260C
<b>HTH610 - ENVIRONMENTAL HEALTH SERVICES</b>							
43F.	610202	VECTOR CONTROL BUILDING, NEW WORKSHOP/PESTICIDE STORAGE FACILITY, HAWAII					
		DESIGN AND CONSTRUCTION TO CONSTRUCT A NEW WORKSHOP AND PESTICIDE STORAGE FACILITY.					
		DESIGN					17
		CONSTRUCTION					83
		TOTAL FUNDING	AGS		C		100C
43G.	610203	WAIAKEA HEALTH CENTER, ENCLOSE FACILITY AND INSTALL AIR CONDITIONING, HAWAII					
		DESIGN AND CONSTRUCTION TO CONSTRUCT NEW WALLS, REPLACE WINDOWS, AND INSTALL AIR CONDITIONING TO REDUCE THE NOISE OF THE AIRPLANES.					
		DESIGN					54
		CONSTRUCTION					546
		TOTAL FUNDING	AGS		C		600C
<b>HTH710 - STATE LABORATORY SERVICES</b>							
44.	710201	DEPARTMENT OF HEALTH LABORATORY-UPGRADE AND RENOVATE LAB, OAHU					
		CONSTRUCTION TO UPGRADE AND RENOVATE THE EXISTING LABORATORY.					
		CONSTRUCTION			872		
		TOTAL FUNDING	AGS		872C		C
44A.	710206	STATE LABORATORY, UPGRADE EMERGENCY POWER, OAHU					
		DESIGN AND CONSTRUCTION TO PROVIDE EMERGENCY POWER FOR EQUIPMENT AND ROOMS.					
		DESIGN					8
		CONSTRUCTION					42
		TOTAL FUNDING	AGS		C		50C
44B.	710207	WAILUKU HEALTH CENTER, EXPAND LABORATORY BUILDING, MAUI					
		DESIGN AND CONSTRUCTION TO EXPAND THE LAB BUILDING TO ACCOMMODATE THE NEW BIO-SAFETY HOOD AND TO CREATE ADDITIONAL STORAGE SPACE.					
		DESIGN					27
		CONSTRUCTION					223
		TOTAL FUNDING	AGS		C		250C

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
HTH760 - HEALTH STATUS MONITORING							
44C.	760201	KINAU HALE, RENOVATE VITAL RECORDS OFFICE, OAHU					
		DESIGN AND CONSTRUCTION TO RELOCATE THE VITAL RECORDS COUNTER INTO THE LOBBY AND TO RENOVATE THE EXISTING SPACE.					
		DESIGN					21
		CONSTRUCTION					129
		TOTAL FUNDING	AGS		C		150C
44D.	760202	KINAU HALE, PROVIDE ADDITIONAL VAULT SPACE, OAHU					
		DESIGN AND CONSTRUCTION TO CONSTRUCT ADDITIONAL VAULT SPACE FOR THE IRREPLACEABLE RECORDS.					
		DESIGN					15
		CONSTRUCTION					85
		TOTAL FUNDING	AGS		C		100C
HTH907 - GENERAL ADMINISTRATION							
45.	907202	LANAKILA HEALTH CENTER, REPLACE AIR CONDITIONING EQUIPMENT, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE AIR CONDITIONING EQUIPMENT AT THE LANAKILA HEALTH CENTER.					
		DESIGN			25		
		CONSTRUCTION			275		
		TOTAL FUNDING	AGS		300C		C
45A.	907212	KINAU HALE, REMOVE ASBESTOS CEILING, OAHU					
		DESIGN AND CONSTRUCTION TO REMOVE ASBESTOS CEILING AND TO RESPRAY AN ACOUSTIC CEILING.					
		DESIGN					80
		CONSTRUCTION					920
		TOTAL FUNDING	AGS		C		1,000C
45B.		VARIOUS IMPROVEMENTS TO HEALTH CENTERS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO HEALTH CENTERS, STATEWIDE. IMPROVEMENTS MAY INCLUDE REROOFING, RENOVATIONS, AIR CONDITIONING UPGRADES, RESURFACING, AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		DESIGN					250
		CONSTRUCTION					1,750
		TOTAL FUNDING	HTH		C		2,000C

**F. SOCIAL SERVICES****HMS503 - YOUTH RESIDENTIAL PROGRAMS**

1. OYS06 HYCF GYM RENOVATION, OAHU

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATION OF THE HAWAII YOUTH CORRECTIONAL FACILITY GYMNASIUM.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			198		
		TOTAL FUNDING	AGS		200C		C

## DEF112 - SERVICES TO VETERANS

## 1A. WAIPAHA CENTENNIAL MEMORIAL, OAHU

DESIGN AND CONSTRUCTION FOR THE  
WAIPAHA CENTENNIAL MEMORIAL ON THE  
GROUNDS OF WAIPAHA INTERMEDIATE  
SCHOOL.

DESIGN						25	
CONSTRUCTION						225	
TOTAL FUNDING		DEF			C	250C	

## 1B. HAWAII ISLAND VETERANS MEMORIAL, HAWAII

PLANS, LAND ACQUISITION, DESIGN,  
CONSTRUCTION, AND EQUIPMENT FOR A  
COMBINED VETERANS CENTER IN HILO HAWAII.  
THIS PROJECT QUALIFIES AS A GRANT,  
PURSUANT TO CHAPTER 42F, HRS.

PLANS						80	
						0 <sup>1</sup>	
LAND						80	
						0 <sup>1</sup>	
DESIGN						230	
						0 <sup>1</sup>	
CONSTRUCTION						2,515	
						0 <sup>1</sup>	
EQUIPMENT						45	
						0 <sup>1</sup>	
TOTAL FUNDING		DEF			C	2,950C	
						0 <sup>1</sup>	

## HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH

## 1C. SEAGULL SCHOOLS INC., OAHU

DESIGN AND CONSTRUCTION FOR A CHILD  
CARE AND ADULT COMMUNITY TRAINING  
CENTER. THIS PROJECT QUALIFIES AS A GRANT,  
PURSUANT TO CHAPTER 42F, HRS.

DESIGN						+	
						0 <sup>1</sup>	
CONSTRUCTION						424	
						0 <sup>1</sup>	
TOTAL FUNDING		HMS			C	425C	
						0 <sup>1</sup>	

## BED220 - RENTAL HOUSING SERVICES

## 2. HA002 KUHIO PARK TERRACE RESOURCE CENTER, OAHU

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE KUHIO PARK TERRACE RESOURCE CENTER.					
		DESIGN		312			
		CONSTRUCTION		7,000			
		EQUIPMENT		35			
		TOTAL FUNDING	BED	7,347N			N
3.	RH001	KUHIO PARK TERRACE REVITALIZATION, OAHU					
		DESIGN AND CONSTRUCTION FOR THE DEMOLITION AND REPLACEMENT OF KUHIO PARK TERRACE. FUNDS WILL BE APPLIED TOWARD A U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT HOPE VI GRANT TO MEET THE GRANT'S LEVERAGING REQUIREMENT FOR MATCHING FUNDS.					
		DESIGN				500	
		CONSTRUCTION				9,500	
		TOTAL FUNDING	BED		C	10,000C	
4.	RH002	RENOVATION FOR ADA ACCESSIBILITY REQUIREMENTS, STATE PUBLIC HOUSING (EXT)					
		CONSTRUCTION FOR THE RENOVATION OF EXTERIOR COMMON ELEMENTS TO MEET ADA ACCESSIBILITY REQUIREMENTS FOR STATE PUBLIC HOUSING AND OTHER NON-FEDERAL PROJECTS, STATEWIDE.					
		CONSTRUCTION		2,400			
		TOTAL FUNDING	BED	2,400C			C
5.	RH003	RENOVATION FOR ADA ACCESSIBILITY REQUIREMENTS, STATE PUBLIC HOUSING (INT)					
		DESIGN AND CONSTRUCTION TO RENOVATE INTERIORS OF UNITS TO MEET ADA ACCESSIBILITY REQUIREMENTS FOR STATE PUBLIC HOUSING AND OTHER NON-FEDERAL PROJECTS, STATEWIDE.					
		DESIGN		225			
		CONSTRUCTION				1,125	
		TOTAL FUNDING	BED	225C		1,125C	
6.	P10014	STATE PUBLIC HOUSING LEAD BASED PAINT ABATEMENT, STATEWIDE					
		CONSTRUCTION FOR THE ABATEMENT OF LEAD BASED PAINT IN STATE LOW INCOME HOUSING UNITS.					
		CONSTRUCTION		750			
		TOTAL FUNDING	BED	750C			C
BED229 - HCDCH ADMINISTRATION							
7.	HA001	HOUSING IMPROVEMENTS FOR FEDERAL LOW RENT PROJECTS, STATEWIDE					



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
DESIGN AND CONSTRUCTION FOR HOUSING IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO PHYSICAL, HEALTH, AND SAFETY IMPROVEMENTS AND COMPLIANCE WITH CURRENT CODES AND STANDARDS.							
		DESIGN		1,076		990	
		CONSTRUCTION		14,504		14,590	
		TOTAL FUNDING	BED	15,580N		15,580N	
7A. HA005 HCDCH SCHOOL STREET OFFICE, BUILDING REPAIR, OAHU							
PLANS, DESIGN, AND CONSTRUCTION TO DETERMINE CAUSE, ARREST AND REPAIR STRUCTURAL DAMAGE.							
		PLANS				35	
		DESIGN				25	
		CONSTRUCTION				225	
		TOTAL FUNDING	BED		C	285C	
7B. RH004 MODERNIZATION & RENOV. OF STATE OWNED HOUSING PROJECTS & HOMELESS FACILITIES							
DESIGN AND CONSTRUCTION FOR THE MAJOR MODERNIZATION OF STATE OWNED HOUSING PROJECTS AND HOMELESS FACILITIES INCLUDING SITE WORK, BUILDING INTERIOR AND EXTERIOR IMPROVEMENTS.							
		DESIGN				200	
		CONSTRUCTION				2,400	
		TOTAL FUNDING	BED		C	2,600C	
BED224 - HOMELESS SERVICES							
8. HS001 KALAELOA HOMELESS SHELTER, IMPROVEMENTS TO FACILITIES FOR THE HOMELESS, OAHU							
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF TWO BARRACKS AT FORMER BARBERS POINT NAVAL AIR STATION THAT ARE SLATED FOR USE AS HOMELESS SHELTERS IN 2001. ONE 70-UNIT BUILDING FOR HOMELESS MENTALLY ILL SINGLES AND ONE 44-UNIT BUILDING FOR HOMELESS FAMILIES. THE CIP REQUEST WILL PROVIDE WATER METERS/SERVICES, EQUIPMENT, TWO VEHICLES, AND SOME STRUCTURAL AND LANDSCAPING IMPROVEMENTS.							
		DESIGN		4			
		CONSTRUCTION		298			
		EQUIPMENT		118			
		TOTAL FUNDING	BED	420C			C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO THE LANAKILA MULTI-PURPOSE SENIOR CENTER. PROJECT INCLUDES HEALTH AND SAFETY IMPROVEMENTS, ACCESSIBILITY IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		50			
		CONSTRUCTION		450			
		EQUIPMENT		5			
		TOTAL FUNDING	AGS	505C			C

## HMS904 - GENERAL ADMINISTRATION (DHS)

## 10. P10016 CATHOLIC CHARITIES OF THE DIOCESE OF HONOLULU, OAHU

PLANS AND DESIGN FOR A NEW OFFICE BUILDING FOR CATHOLIC CHARITIES OF THE DIOCESE, HONOLULU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS		50		
DESIGN		200		
TOTAL FUNDING	HMS	250C		C

## G. FORMAL EDUCATION

## EDN100 - SCHOOL-BASED BUDGETING

## 1. 002 LUMP SUM CIP-MINOR RENOVATIONS TO BUILDINGS &amp; SCHOOL SITES, STATEWIDE

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

DESIGN		150		150
CONSTRUCTION		1,700		1,700
EQUIPMENT		150		150
TOTAL FUNDING	AGS	2,000B		2,000B

## 2. 003 LUMP SUM CIP-MASTER PLANS, SITE STUDIES, AND MINOR LAND ACQUISITIONS, STATEWIDE

PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ELEMENTS FOR BUDGETING AND EXPENDITURE PLANNING.

PLANS		245		245
LAND		5		5
TOTAL FUNDING	AGS	250B		250B

## 3. 004 LUMP SUM CIP-RENOVATIONS FOR NOISE AND HEAT ABATEMENT, STATEWIDE

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE, VENTILATION, AND/OR HIGH TEMPERATURE PROBLEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		200
		CONSTRUCTION			800		800
		TOTAL FUNDING	AGS		1,000B		1,000B
4. 005		LUMP SUM CIP-FIRE PROTECTION, CODE VIOLATIONS, AND ALARM SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS TO MEET COUNTY FIRE PROTECTION STANDARDS AND/OR FIRE CODE VIOLATIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		100
		CONSTRUCTION			400		400
		TOTAL FUNDING	AGS		500B		500B
5. 006		LUMP SUM CIP-ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO PHYSICALLY CHALLENGED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			400		400
		CONSTRUCTION			2,600		2,600
		TOTAL FUNDING	AGS		3,000B		3,000B
6. 007		LUMP SUM CIP-SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		100
		CONSTRUCTION			300		300
		EQUIPMENT			100		100
		TOTAL FUNDING	AGS		500B		500B
7. 008		LUMP SUM CIP-ASBESTOS AND/OR LEAD PAINT REMOVAL IN SCHOOL BUILDINGS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTION, IMPROVEMENT, AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS, STATEWIDE. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD PAINT.					
		DESIGN			100		400

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION			900	2,465	
		TOTAL FUNDING	AGS	1,000B		2,865B	
8.	009	LUMP SUM CIP-REQUIREMENTS FOR HEALTH & SAFETY/LAWS AND ORDINANCES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES AND/OR COUNTY REQUIREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100	100	
		CONSTRUCTION			400	400	
		TOTAL FUNDING	AGS	500B		500B	
9.	010	LUMP SUM CIP-PROJECT ADJUSTMENT FUND, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DOE PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.					
		DESIGN			200	100	
		CONSTRUCTION			1,450	7,565	
		EQUIPMENT			100	100	
		TOTAL FUNDING	AGS	1,750B		7,765B	
10.	011	LUMP SUM CIP-TELECOMMUNICATIONS AND POWER INFRASTRUCTURE, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			250	422	
		CONSTRUCTION			1,700	3,163	
		EQUIPMENT			50	50	
		TOTAL FUNDING	AGS	2,000B		3,635B	
11.	014	LUMP SUM CIP-CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROJECTS.					
		PLANS FOR COSTS RELATED TO PROFESSIONAL SERVICES FOR CONDUCTING GOVERNMENTAL ACCOUNTING AND STANDARD BOARD REVIEWS.					
		PLANS			743	250	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	EDN		250B		250B
			EDN		493C		C
12.	060	LUMP SUM CIP-STATE/DISTRICT RELOCATING AND IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		50
		CONSTRUCTION			150		150
		EQUIPMENT			50		50
		TOTAL FUNDING	AGS		250B		250B
13.	101	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES AND/OR TRAILER PORTABLES WHILE SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION/REPAIR; GROUND AND SITE WORK; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		200
		CONSTRUCTION			3,600		3,600
		EQUIPMENT			200		200
		TOTAL FUNDING	AGS		4,000B		4,000B
14.	007071	LUMP SUM CIP-PUBLIC ACCOMMODATIONS TRANSITION PLANS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISIONS OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			250		1,130
		CONSTRUCTION			500		7,844
		TOTAL FUNDING	AGS		750B		8,974B
15.	009002	LUMP SUM CIP-PLAYGROUND EQUIPMENT ACCESSIBILITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/ EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			40		334

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION			260		2,608
		EQUIPMENT			200		200
		TOTAL FUNDING	AGS		500B		3,142B
16.	P00026	LUMP SUM CIP-PLAYGROUND EQUIPMENT, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET U.S. CONSUMER PRODUCTS SAFETY COMMISSION SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT. PROVIDE ACCESSIBILITY TO THE PLAY AREAS/ EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		200
		CONSTRUCTION			1,000		1,850
		EQUIPMENT			300		300
		TOTAL FUNDING	AGS		1,500B		2,350B
17.	014050	LUMP SUM CIP-ELECTRICAL UPGRADES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES AT SCHOOLS, STATEWIDE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			400		400
		CONSTRUCTION			1,100		1,100
		TOTAL FUNDING	AGS		1,500B		1,500B
17A.	018	LUMP SUM CIP-ELIMINATION OF CESSPOOLS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE ELIMINATION OF CESSPOOLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					250
		CONSTRUCTION					1,750
		TOTAL FUNDING	AGS			B	2,000B
17B.	019	LUMP SUM CIP-GENDER EQUITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1,000
		CONSTRUCTION					8,000
		EQUIPMENT					1,000
		TOTAL FUNDING	AGS			B	10,000B
17C.	020	LUMP SUM CIP-SCHOOL RENOVATIONS, STATEWIDE					
		CONSTRUCTION FOR THE RENOVATION OF SCHOOLS IN NEED OF REPAIRS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION					6,000

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	AGS		B	6,000B	
18.	250051	AUGUST AHRENS ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		225			
		CONSTRUCTION		3,000			
		EQUIPMENT		200			
		TOTAL FUNDING	AGS	3,425B			B
19.	104A60	CENTRAL MIDDLE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A, PHASE I; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		365			
		CONSTRUCTION		5,100			
		EQUIPMENT		125			
		TOTAL FUNDING	AGS	5,590B			B
19A.		IAO INTERMEDIATE SCHOOL, MAUI					
		EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE ARMORY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		EQUIPMENT				100	
		TOTAL FUNDING	AGS		B	100B	
19B.		KAMALII ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR VARIOUS IMPROVEMENTS TO INCLUDE THE INSTALLATION OF A PERMANENT STAGE IN THE CAFETORIUM, AND THE INSTALLATION OF AN ACCESSIBLE WALKWAY TO PLAYGROUND EQUIPMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				7	
		CONSTRUCTION				40	
		EQUIPMENT				5	
		TOTAL FUNDING	AGS		R	52R	
20.	292300	KAPOLEI HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR SECOND AND/OR THIRD INCREMENT PHASE II; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		17,952			
		EQUIPMENT		500			
		TOTAL FUNDING	AGS	18,427B			B
			AGS	25R			R

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
20A.	292400	KAPOLEI HIGH SCHOOL, FOURTH INCREMENT, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE FOURTH INCREMENT, PHASE IIB; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS INCREMENT TO INCLUDE BUILDINGS J, E, F, K, M.					
		CONSTRUCTION				19,500	
		EQUIPMENT				585	
		TOTAL FUNDING	AGS		B	20,000B	
			AGS		R	85R	
21.	376063	KONAWAENA MIDDLE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE OLD ELEMENTARY SCHOOL BUILDINGS A AND B INTO MIDDLE SCHOOL CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			10		
		CONSTRUCTION			865		
		EQUIPMENT			25		
		TOTAL FUNDING	AGS		900B		B
21A.		KUALAPUU ELEMENTARY SCHOOL, MOLOKAI					
		EQUIPMENT FOR A SIX CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		EQUIPMENT				40	
		TOTAL FUNDING	AGS		B	40B	
22.	414051	LAHAINALUNA HIGH SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF CLASSROOMS FORMERLY USED AS A TEMPORARY LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			100		63
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		100B		B
			AGS		100R		63R
23.	214051	LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING (REPLACEMENT); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			320		
		CONSTRUCTION			3,100		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		3,520B		B
24.	240100	MILILANI MAUKA II ELEMENTARY SCHOOL, OAHU					



CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION AND EQUIPMENT FOR FIRST (1ST) AND/OR SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION EQUIPMENT		16,941 501		5,109	
		TOTAL FUNDING	AGS	17,442B		5,100B	
			AGS		R		9R
25.	823100	NANAKULI IV ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION EQUIPMENT		2,275			
		TOTAL FUNDING	AGS	2,275B		500 500B	
26.	223F60	PEARL HARBOR KAI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING "F" (BOMB SHELTER) INTO CLASSROOMS, STORAGE, OFFICES, TOILETS, PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200			
		CONSTRUCTION EQUIPMENT		1,800 65			
		TOTAL FUNDING	AGS	2,065B			B
27.	146A60	ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A PHASE I; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		800			
		CONSTRUCTION EQUIPMENT		3,800 200			
		TOTAL FUNDING	AGS	4,800B			B
27A.		WAIHEE ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A PLAYFIELD, WATER RETENTION BASIN; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION EQUIPMENT				2,041 150	
		TOTAL FUNDING	AGS		B	2,191B	
28.	233A66	WAIMALU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		75			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION EQUIPMENT			375 50		
		TOTAL FUNDING	AGS		500B		B
29.	462C60	WAIMEA HIGH SCHOOL, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDINGS C AND H; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		
		CONSTRUCTION			2,000		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		2,300B		B
30.	STAPK1	PRE-SCHOOL FACILITIES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PRE-SCHOOL FACILITIES ON SCHOOL GROUNDS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			1		1
		LAND			1		1
		DESIGN			1		1
		CONSTRUCTION			2,497		2,497
		TOTAL FUNDING	AGS		2,500C		2,500C
30A.		AIEA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING FOR CLASSROOMS AND ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					15
		CONSTRUCTION					175
		EQUIPMENT					10
		TOTAL FUNDING	AGS		C		200C
30B.		ALIOLANI ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FITNESS EQUIPMENT AND SURFACING THAT MEETS NATIONAL PLAYGROUND SAFETY STANDARDS AND THE ADA REQUIREMENTS FOR ACCESSIBILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					7
		CONSTRUCTION					30
		EQUIPMENT					15
		TOTAL FUNDING	AGS		C		53C
30C.		ANUENUE SCHOOL, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY AT ANUENUE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION				2,497	
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		2,500C
31.	400052	BALDWIN HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		300			
		CONSTRUCTION		4,620			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	5,020C			C
31A.		CASTLE HIGH SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF BLEACHERS AND STORAGE AT CASTLE HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					50
		DESIGN					200
		CONSTRUCTION				1,750	
		TOTAL FUNDING	AGS		C		2,000C
32.	P10029	DOLE INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE BAND ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		83			
		CONSTRUCTION		200			
		TOTAL FUNDING	AGS	283C			C
32A.	254052	EWA BEACH ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR A SIX CLASSROOM BUILDING AT EWA BEACH ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					300
		TOTAL FUNDING	AGS		C		300C
32B.	402051	HANA HIGH AND ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR A SIX CLASSROOM BUILDING AT HANA HIGH AND ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					250

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN '000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	AGS		C		250C
33.	P10030	HIGHLANDS INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXTENSION OF THE MUSIC BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			36		
		CONSTRUCTION			900		
		TOTAL FUNDING	AGS		936C		C
33A.		KAALA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AIR CONDITIONING FOR THE LIBRARY AND COMPUTER CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					10
		CONSTRUCTION					260
		EQUIPMENT					205
		TOTAL FUNDING	AGS		C		475C
33B.		KAEWAI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE STABILIZATION OF BUILDINGS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					700
		TOTAL FUNDING	AGS		C		800C
33C.	P99041	KAHUKU HIGH SCHOOL, OAHU					
		LAND ACQUISITION TO IMPLEMENT THE KAHUKU SCHOOL MASTER PLAN TO MEET EDUCATIONAL STANDARDS FOR INTERMEDIATE/SECONDARY SCHOOLS.					
		LAND					1,000
		TOTAL FUNDING	AGS		C		1,000C
34.	P10031	KAIMILOA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			450		
		TOTAL FUNDING	AGS		500C		C
35.	P10032	KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		300C		C
36.	P10033	KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING F; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			45		
		CONSTRUCTION			405		
		TOTAL FUNDING	AGS		450C		C
36A.	P99042	KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RECONFIGURATION OF AIR CONDITIONING SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					150
		CONSTRUCTION					850
		TOTAL FUNDING	AGS		C		1,000C
36B.	275020	KAMAILE ELEMENTARY SCHOOL, OAHU					
		LAND ACQUISITION TO INCREASE CAMPUS SIZE.					
		LAND					250
		TOTAL FUNDING	AGS		C		250C
36C.		KAMILOIKI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR SOUNDPROOFING PARTITIONS FOR 3 ON 2 AND 6 ON 4 CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					20
		CONSTRUCTION					180
		TOTAL FUNDING	AGS		C		200C
37.	313B60	KANEOHE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		
		CONSTRUCTION			1,900		
		EQUIPMENT			80		
		TOTAL FUNDING	AGS		2,180C		C
38.	P10035	KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO THE MUSIC BUILDING. PROJECT INCLUDES ELECTRICAL, LIGHTING, PLUMBING, AND P.A. SYSTEM IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				37	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION EQUIPMENT			187		
		TOTAL FUNDING	AGS		225C		C
38A.		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO THE AUDITORIUM TO INCLUDE THE ELECTRICAL LIGHTING AND PLUMBING SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					300
		TOTAL FUNDING	AGS		C		350C
38B.	370251	KEAAU INTERMEDIATE SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR MUSIC BUILDING, COVERED WALKWAY, AND SEWER SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					230
		CONSTRUCTION					2,300
		TOTAL FUNDING	AGS		C		2,530C
38C.		LAHAINALUNA HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ATHLETIC LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					200
		CONSTRUCTION					1,975
		EQUIPMENT					25
		TOTAL FUNDING	AGS		C		2,200C
38D.		LEIHOKU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW ADMINISTRATION AND LIBRARY BUILDING AND THE RENOVATION OF EXISTING FACILITIES TO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					400
		CONSTRUCTION					3,400
		EQUIPMENT					200
		TOTAL FUNDING	AGS		C		4,000C
38E.		LIKELIKE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF PLAYGROUND EQUIPMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					20
		CONSTRUCTION					50
		EQUIPMENT					50

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	AGS		C		120C
39.	851100	MAUI LANI ELEMENTARY SCHOOL, MAUI					
		PLANS AND DESIGN FOR THE FIRST AND SECOND INCREMENT.					
		PLANS		199			
		DESIGN		1			
		TOTAL FUNDING	AGS	200C			C
39A.		MAUKA LANI ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					250
		TOTAL FUNDING	AGS		C		250C
40.	240051	MILILANI MAUKA II ELEMENTARY SCHOOL, OAHU					
		PLANS AND DESIGN FOR AN ADDITIONAL TWO STORY, SIX CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		5			
		DESIGN		195			
		TOTAL FUNDING	AGS	200C			C
40A.		NANAKULI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ATHLETIC LOCKER SHOWER, DEMOLITION OF EXISTING PORTABLE BLEACHERS. FACILITY SHOULD ALSO INCLUDE CONSTRUCTION OF BLEACHERS ABOVE THE LOCKER SHOWER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					350
		CONSTRUCTION					3,400
		EQUIPMENT					50
		TOTAL FUNDING	AGS		C		3,800C
41.	P10038	NUUANU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR LANDSCAPING IMPROVEMENTS. PROJECT INCLUDES DRAINAGE IMPROVEMENTS, BLACKTOP REPAVEMENT, A TURN AROUND AND RELATED IMPROVEMENTS.					
		DESIGN		26			
		CONSTRUCTION		217			
		TOTAL FUNDING	AGS	243C			C
41A.	293100	OCEAN POINT ELEMENTARY SCHOOL, OAHU					
		PLANS AND DESIGN FOR FIRST AND SECOND INCREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					100

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN				1,100	
		TOTAL FUNDING	AGS		C	1,200C	
41B.		PAHOA HIGH AND INTERMEDIATE SCHOOL, OAHU					
		PLANS AND DESIGN FOR A NEW GYMNASIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				100	
		DESIGN				350	
		TOTAL FUNDING	AGS		C	450C	
41C.		PEARL CITY ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING OF SCHOOL BUILDINGS AT PEARL CITY ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				425	
		EQUIPMENT				25	
		TOTAL FUNDING	AGS		C	500C	
41D.		PALOLO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PARKING STALLS ON THE SCHOOL'S CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				17	
		CONSTRUCTION				133	
		TOTAL FUNDING	AGS		C	150C	
42.	P10039	PAUOA ELEMENTARY SCHOOL, LIBRARY EXPANSION, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE PAUOA ELEMENTARY SCHOOL LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			200		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		325C		C
42A.		PEARL CITY HIGH SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A WEIGHT TRAINING ROOM FOR PEARL CITY HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				1	
		DESIGN				50	
		CONSTRUCTION				398	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		C	450C	



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
42B.	284100	ROYAL KUNIA ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR FIRST AND SECOND INCREMENTS OF NEW SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1,200	
		TOTAL FUNDING	AGS		C	1,200C	
42C.		SALT LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES, AIR CONDITIONING INSTALLATION, AND CLASSROOM RENOVATIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				60	
		CONSTRUCTION				460	
		TOTAL FUNDING	AGS		C	520C	
43.	P10040	STEVENSON MIDDLE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIELD AND PARKING LOT IMPROVEMENTS, FENCING, AND RESTROOM FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200			
		CONSTRUCTION		975			
		EQUIPMENT		25			
		TOTAL FUNDING	AGS	1,200C			C
43A.		WAIHAOLE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING INSTALLATION IN BUILDING D; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				25	
		CONSTRUCTION				224	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		C	250C	
43B.		WAIALUA INTERMEDIATE AND HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING TENNIS COURTS, CONSTRUCTION OF A SAFETY FENCE AND EQUIPMENT SHED FOR THE BASEBALL FIELD, CONSTRUCTION OF AN ADA COMPLIANT DUGOUT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				10	
		CONSTRUCTION				180	
		EQUIPMENT				60	
		TOTAL FUNDING	AGS		C	250C	
43C.	272051	WAIANAE HIGH SCHOOL, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					320
		TOTAL FUNDING	AGS		C		320C
43D.		WAIANAE HIGH SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW MEDIA BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					1,298
		EQUIPMENT					120
		TOTAL FUNDING	AGS		C		1,420C
43E.	277251	WAIPAHU HIGH SCHOOL, OAHU					
		DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					300
		TOTAL FUNDING	AGS		C		300C
43F.		WAIPAHU INTERMEDIATE SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CAFETERIA WITH FOOD PREPARATION FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					70
		DESIGN					200
		CONSTRUCTION					2,600
		EQUIPMENT					125
		TOTAL FUNDING	AGS		C		2,995C
<b>AGS807 - PHYSICAL PLANT OPERATIONS &amp; MAINTENANCE-AGS</b>							
44.	CSD03	LUMP SUM CIP-SCHOOL BUILDING IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT OF PUBLIC SCHOOL FACILITIES, STATEWIDE. PROJECTS MAY INCLUDE ROOFING, AIR CONDITIONING, PAINTING, PLUMBING, OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES MAINTAINED BY DAGS AND/OR DOE.					
		DESIGN		6,000		6,000	
		CONSTRUCTION		119,000		114,000	
		TOTAL FUNDING	AGS	125,000C		120,000C	

**EDN407 - PUBLIC LIBRARIES**

45. 01-H&amp;S HEALTH AND SAFETY REQUIREMENTS, STATEWIDE

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDING AND GROUNDS, AND OTHER RELATED WORK.					
		PLANS		50		50	
		DESIGN		500		400	
		CONSTRUCTION		1,900		1,500	
		EQUIPMENT		50		50	
		TOTAL FUNDING	AGS	2,500C		2,000C	
46.	P10041	AIEA PUBLIC LIBRARY, OAHU					
		LAND ACQUISITION FOR THE AIEA PUBLIC LIBRARY.					
		LAND		2,500			
		TOTAL FUNDING	AGS	2,500C			C
46A.		HANAPEPE PUBLIC LIBRARY, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE LIBRARY.					
		DESIGN				150	
		CONSTRUCTION				1,500	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		C	1,651C	
46B.		MAKAWAO PUBLIC LIBRARY, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE EXPANSION OF MAKAWAO PUBLIC LIBRARY AND PARKING AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				1	
		LAND				120	
		DESIGN				350	
		CONSTRUCTION				2,529	
		TOTAL FUNDING	AGS		C	3,000C	
UOH100 - UNIVERSITY OF HAWAII, MANOA							
47.	M86	UHM, FOOD SERVICE FACILITIES, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO FOOD SERVICE FACILITIES AT THE UNIVERSITY OF HAWAII AT MANOA.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		747			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	750B			B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
48.	M88	UHM, PARKING STRUCTURES AND IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF PARKING STRUCTURES AND PARKING IMPROVEMENTS AT THE UNIVERSITY OF HAWAII AT MANOA.					
		DESIGN		209			
		CONSTRUCTION		3,216			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	3,426W			W
49.	M91	UHM, WAAHILA FACULTY HOUSING COMPLEX, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE WAAHILA FACULTY HOUSING COMPLEX.					
		DESIGN		537			
		CONSTRUCTION		4,271			
		EQUIPMENT		600			
		TOTAL FUNDING	UOH	5,408W			W
50.	074	UHM, SCHOOL OF MEDICINE AND CANCER RESEARCH CENTER, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RELOCATION AND DEVELOPMENT OF THE SCHOOL OF MEDICINE AND CANCER RESEARCH CENTER. PROJECT TO INCLUDE ACQUISITION OF LAND, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED WORK AND EXPENSES.					
		PLANS		1			
		LAND		1			
		DESIGN		12,997			1
		CONSTRUCTION		1		69,998	
		EQUIPMENT				1	
		TOTAL FUNDING	UOH	13,000C			C
			UOH		E	35,000E	
			UOH		R	35,000R	
51.	296	UHM, BASKETBALL/VOLLEYBALL PAVILION, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A BASKETBALL/VOLLEYBALL PAVILION.					
		DESIGN		261			
		CONSTRUCTION		3,671			
		EQUIPMENT		450			
		TOTAL FUNDING	UOH	4,382R			R
52.	693	UHM, USDA FRUIT FLY FACILITY IN WAIMANALO, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FRUIT FLY AND WATER RECLAMATION FACILITIES IN WAIMANALO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		2,597		1,000	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		EQUIPMENT			1		
		TOTAL FUNDING	UOH	2,600N		1,000N	
53.	297	UHM, PHYSICAL EDUCATION/ATHLETICS COMPLEX, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR OFFICE AND CONFERENCE SPACE AT THE PHYSICAL EDUCATION/ATHLETICS COMPLEX.					
		DESIGN			100		
		CONSTRUCTION			750		
		EQUIPMENT			50		
		TOTAL FUNDING	UOH		900C		C
54.	298	UHM, MAKAI ATHLETIC TRAINING ROOM, RENOVATION AND EXPANSION, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAKAI ATHLETIC TRAINING ROOM RENOVATION AND EXPANSION; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			599		
		EQUIPMENT			1		
		TOTAL FUNDING	UOH		650C		C
54A.	084	UHM, COMPUTER SCIENCES, FILM, AND INFORMATION TECHNOLOGY BUILDING, OAHU					
		PLANS AND DESIGN FOR THE COMPUTER SCIENCES, FILM, AND INFORMATION TECHNOLOGY BUILDING. PROJECT MAY INCLUDE PARKING IMPROVEMENTS AND RENOVATIONS TO EXISTING FACILITIES.					
		PLANS					999
		DESIGN					1
		TOTAL FUNDING	UOH		C		1,000C
54B.	M92	UHM, FACULTY HOUSING, OAHU					
		CONSTRUCTION FOR UNIVERSITY OF HAWAII FACULTY HOUSING.					
		CONSTRUCTION					17,680
		TOTAL FUNDING	UOH		E		17,680E
54C.	699	UHM, INSTITUTE FOR ASTRONOMY ADVANCED TECHNOLOGY RESEARCH CENTER AT KULA, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTITUTE FOR ASTRONOMY ADVANCED TECHNOLOGY RESEARCH CENTER AT KULA.					
		PLANS					1
		LAND					1,853
		DESIGN					900
		CONSTRUCTION					4,875
		EQUIPMENT					975
		TOTAL FUNDING	UOH		C		8,604C
54D.	292	UHM, FREAR HALL REPLACEMENT, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF FREAR HALL.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION				30,637	
		EQUIPMENT					1
		TOTAL FUNDING	UOH		E	30,640E	
54E.		UHM, HAWAII INSTITUTE OF MARINE BIOLOGY RESEARCH LAB AT COCONUT ISLAND, OAHU					
		DESIGN AND CONSTRUCTION FOR A MODERN LAB/OFFICE COMPLEX FOR THE HAWAII INSTITUTE OF MARINE BIOLOGY AT COCONUT ISLAND.					
		DESIGN					2,000
		CONSTRUCTION					11,000
		TOTAL FUNDING	UOH		C		2,000C
			UOH		E		11,000E
54F.		UHM, CANCER RESEARCH CENTER, OAHU					
		PLANS FOR THE IDENTIFICATION OF POTENTIAL SITES FOR A CANCER RESEARCH CENTER AND TO DEVELOP LEGAL PARTNERSHIPS BETWEEN THE CANCER RESEARCH CENTER, PRIVATE HOSPITALS, AND PRACTICING ONCOLOGISTS.					
		PLANS					100
		TOTAL FUNDING	UOH		C		100C
54G.		UHM, PARADISE PARK, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE PARADISE PARK PROPERTY IN MANOA. PROJECT TO INCLUDE LEASE AND/OR FEE TITLE INTEREST IN THE PROPERTY; IMPROVEMENTS TO EXISTING FACILITIES; CONSTRUCTION OF NEW FACILITIES; INFRASTRUCTURE AND SITE IMPROVEMENTS; AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					500
		LAND					2,000
		DESIGN					1
		CONSTRUCTION					2,998
		EQUIPMENT					1
		TOTAL FUNDING	UOH		C		5,500C

## UOH210 - UNIVERSITY OF HAWAII, HILO

55. 389 UHH, MAUNA KEA EDUCATION CENTER AT THE UNIVERSITY PARK, HAWAII

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAUNA KEA EDUCATION CENTER AT THE UNIVERSITY PARK IN HILO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		1,000			
		CONSTRUCTION		9,080			
		EQUIPMENT		9,900			
		TOTAL FUNDING	UOH	19,980N			N
56.	335	UHH, SCIENCES AND TECHNOLOGY BUILDING, HAWAII					
		PLANS AND DESIGN FOR THE SCIENCES AND TECHNOLOGY BUIDING.					
		PLANS		100			1
		DESIGN		900		2,499	
		TOTAL FUNDING	UOH	1,000C		2,500C	
57.	448	UHH, STUDENT LIFE AND EVENTS COMPLEX, HAWAII					
		PLANS AND DESIGN FOR THE STUDENT LIFE AND EVENTS COMPLEX. PROJECT MAY INCLUDE PARKING FACILITIES AND THE RELOCATION OF PROGRAMS AFFECTED BY THIS PROJECT.					
		PLANS		200		1,000	
		DESIGN				3,000	
		TOTAL FUNDING	UOH	200C		4,000C	
57A.	413	UHH, ADMINISTRATION BUILDING ADDITION AND STUDENT SERVICES RENOVATION, HAWAII					
		PLANS AND DESIGN FOR AN ADMINISTRATION BUILDING ADDITION AND RENOVATION OF THE EXISTING STUDENT SERVICES BUILDING.					
		PLANS					1
		DESIGN				799	
		TOTAL FUNDING	UOH		C	800C	
57B.		UHH, ROADWAY AND INFRASTRUCTURE IMPROVEMENTS FOR USDA FACILITIES, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR ON AND OFF SITE IMPROVEMENTS OF ROADWAY AND INFRASTRUCTURE AT THE UNIVERSITY PARK MAUKA OF KOMOHANA STREET.					
		PLANS					1
		DESIGN				199	
		CONSTRUCTION				2,300	
		TOTAL FUNDING	UOH		C	2,500C	
57C.		UHH, NORTH HAWAII RESEARCH AND EDUCATION CENTER, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATION OF THE OLD HONOKAA HOSPITAL FOR OUTREACH AND EDUCATIONAL ACCESS IN NORTH HAWAII.					
		PLANS				50	
		DESIGN				200	
		CONSTRUCTION				1,500	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		TOTAL FUNDING	UOH		C	1,750C	
<b>UOH700 - UNIVERSITY OF HAWAII, WEST OAHU</b>							
57N.	705	UNIVERSITY OF HAWAII-WEST OAHU, CAMPUS DEVELOPMENT, OAHU					
		PLANS AND DESIGN FOR THE DEVELOPMENT OF THE UNIVERSITY OF HAWAII-WEST OAHU.					
		PLANS		2,000			
		DESIGN		6,000			
		TOTAL FUNDING	UOH	8,000C			C
<b>UOH800 - UH - COMMUNITY COLLEGES</b>							
58.	A30	HON, HIGH TECHNOLOGY PROGRAMS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING BUILDINGS TO ACCOMMODATE HIGH TECHNOLOGY PROGRAMS AT HONOLULU COMMUNITY COLLEGE.					
		DESIGN		433			
		CONSTRUCTION		2,860			
		EQUIPMENT		396			
		TOTAL FUNDING	UOH	3,689C			C
59.	A29	HON, PACIFIC AEROSPACE TRAINING CENTER, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF KALAELOA HANGAR 111 AND DORMITORY FOR THE COMMERCIAL AVIATION PROGRAM.					
		DESIGN		446			
		CONSTRUCTION				1,691	
		EQUIPMENT				234	
		TOTAL FUNDING	UOH	446C		1,925C	
60.	L27	LEE, FOOD SERVICES PROGRAM, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS FOR THE CULINARY ARTS PROGRAM.					
		DESIGN		366			
		CONSTRUCTION				2,669	
		EQUIPMENT				370	
		TOTAL FUNDING	UOH	366C		3,039C	
61.	M14	MAU, FOOD SERVICES PROGRAM, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR THE FOOD SERVICES BUILDING AT MAUI COMMUNITY COLLEGE.					
		CONSTRUCTION		1,000			
		EQUIPMENT		1,000			
		TOTAL FUNDING	AGS	2,000C			C
62.	W50	WIN, LIBRARY/LEARNING CENTER, OAHU					



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, AND CONSTRUCTION OF SITE IMPROVEMENTS FOR A NEW LIBRARY/ LEARNING CENTER, INCLUDING GROUND AND SITE IMPROVEMENTS, AND APPURTENANCES.					
		PLANS			25		
		DESIGN			25		
		CONSTRUCTION			300		
		TOTAL FUNDING	UOH		350C		C
62A.	M65	MAU, STUDENT SERVICES BUILDING RENOVATION, MAUI					
		DESIGN FOR THE RENOVATION OF THE STUDENT SERVICES BUILDING.					
		DESIGN					100
		TOTAL FUNDING	UOH		C		100C
62B.	K62	KAU, ADMINISTRATION/STUDENT SERVICES/ACADEMIC SUPPORT/ OCET BUILDING, KAUAI					
		PLANS AND DESIGN FOR THE ADMINISTRATION/ STUDENT SERVICES/ACADEMIC SUPPORT/OCET BUILDING.					
		PLANS					1
		DESIGN					1,142
		TOTAL FUNDING	UOH		C		1,143C

## UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT

63.	511	SYS, UNIVERSITY OF HAWAII BOOKSTORES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO UNIVERSITY OF HAWAII BOOKSTORES, SYSTEMWIDE.					
		DESIGN		2			
		CONSTRUCTION		996			
		EQUIPMENT		2			
		TOTAL FUNDING	UOH	1,000W			W
64.	521	SYS, INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INFRASTRUCTURE AND RELATED IMPROVEMENTS AT UNIVERSITY CAMPUSES, SYSTEMWIDE.					
		DESIGN		734			
		CONSTRUCTION		4,437		3,433	
		EQUIPMENT		1		1	
		TOTAL FUNDING	UOH	5,172C		3,434C	
65.	531	SYS, MODIFICATIONS FOR ACCESSIBILITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS FOR ACCESSIBILITY IMPROVEMENTS. PROJECT TO IDENTIFY AND CORRECT EXISTING ARCHITECTURAL BARRIERS AT ALL UNIVERSITY CAMPUSES, EXTENSION SITES, AND OTHER RELATED FACILITIES.					
		DESIGN		583			
		CONSTRUCTION		485		4,857	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		EQUIPMENT					1
		TOTAL FUNDING	AGS	1,068C		4,858C	
66.	536	SYS. HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.					
		PLANS		50			
		DESIGN		556			
		CONSTRUCTION		3,338		1,763	
		TOTAL FUNDING	AGS	3,944C		1,763C	
67.	537	SYS. FIRE SAFETY IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE SAFETY SYSTEMS. THE PROJECT MAY INCLUDE FIRE ALARM SYSTEMS, FIRE DETECTION SYSTEMS, FIRE SPRINKLER SYSTEMS, CENTRAL FIRE ALARM SYSTEMS, AND ALL OTHER FIRE SAFETY IMPROVEMENTS.					
		DESIGN		278			
		CONSTRUCTION		469		3,028	
		TOTAL FUNDING	AGS	747C		3,028C	
68.	541	SYS. CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENEWAL AND DEFERRED MAINTENANCE OF THE UNIVERSITY'S PHYSICAL PLANT. PROJECT TO INCLUDE REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER IMPROVEMENTS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.					
		PLANS		100		400	
		DESIGN		1,000		3,600	
		CONSTRUCTION		25,899		30,995	
		EQUIPMENT		1		5	
		TOTAL FUNDING	UOH	27,000C		35,000C	
68A.	503	SYS. MAJOR CIP PLANNING, STATEWIDE					
		PLANS FOR LONG RANGE DEVELOPMENT PLANS, INCLUDING UPDATES OF LONG RANGE DEVELOPMENT PLANS FOR VARIOUS UNIVERSITY CAMPUSES, PROJECT DEVELOPMENT REPORTS, AND OTHER PLANNING DOCUMENTS.					
		PLANS				1,000	
		TOTAL FUNDING	UOH		C	1,000C	

## H. CULTURE AND RECREATION

## UOH881 - AQUARIA

1. 579 UHM, WAIKIKI AQUARIUM-SEA WALL AND WALKWAY, OAHU

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR THE RENOVATION AND REPAIR OF THE WAIKIKI AQUARIUM SEA WALL AND WALKWAY.					
		DESIGN		71			
		CONSTRUCTION		912			
		TOTAL FUNDING	AGS	983C			C
<b>AGS881 - PERFORMING &amp; VISUAL ARTS EVENTS</b>							
2.	I117	STATE ART GALLERY AT NO. 1 CAPITOL DISTRICT BUILDING, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A STATE ART GALLERY FOR THE STATE FOUNDATION ON CULTURE AND THE ARTS (SFCA) ON THE FIRST AND SECOND FLOORS OF THE NO. 1 CAPITOL DISTRICT BUILDING.					
		CONSTRUCTION		3,042		525	
		EQUIPMENT		216			
		TOTAL FUNDING	AGS	3,258B		525B	
3.	I119	WORKS OF ART MASTER PLANNING, STATEWIDE					
		PLANS AND DESIGN FOR THE INTEGRATION OF THE STATE FOUNDATION ON CULTURE AND THE ARTS (SFCA) WORKS OF ART PROGRAM INTO THE ARCHITECTURAL DESIGN OF PROPOSED EDUCATIONAL AND GOVERNMENT FACILITIES, STATEWIDE.					
		PLANS		100		100	
		DESIGN		100		100	
		TOTAL FUNDING	AGS	200B		200B	
3A.	L109	NO. 1 CAPITOL DIST. BLDG., VISITOR AMENITIES FOR STATE ART GALLERY, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR VISITOR AMENITIES FOR THE STATE ART GALLERY AT THE NO. 1 CAPITOL DISTRICT BUILDING.					
		DESIGN				95	
		CONSTRUCTION				830	
		EQUIPMENT				55	
		TOTAL FUNDING	AGS		C	980C	
3B.		JAPANESE CULTURAL CENTER, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE ACQUISITION OF THE JAPANESE CULTURAL CENTER, OAHU.					
		PLANS				+	
						0 <sup>1</sup>	
		LAND				7,997	
						0 <sup>1</sup>	
		DESIGN				+	
						0 <sup>1</sup>	
		CONSTRUCTION				+	
						0 <sup>1</sup>	
		TOTAL FUNDING	AGS		C	8,000C	
						0 <sup>1</sup>	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
3C.		STATE CAPITOL, REPLACE MOSAIC, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE THE MOSAIC LOCATED AT THE STATE CAPITOL ROTUNDA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					200
		TOTAL FUNDING	AGS		B		250B
<b>LNR802 - HISTORIC PRESERVATION</b>							
3D.		HAWAII THEATRE CENTER, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RESTORATION AND RENOVATION OF THE HAWAII THEATRE CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					20
		CONSTRUCTION					960
		EQUIPMENT					20
		TOTAL FUNDING	LNR		C		1,000C
<b>LNR806 - PARK DEVELOPMENT AND OPERATION</b>							
4. F31		WAILUA RIVER STATE PARK, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION OF SEWAGE SYSTEM IMPROVEMENTS AT FERN GROTTA AND OTHER RELATED IMPROVEMENTS.					
		PLANS				50	
		DESIGN				200	
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR		250C		1,000C
5. F46		KOKEE/WAIMEA CANYON STATE PARK COMPLEX, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION OF IMPROVEMENTS TO PARK WATER STORAGE AND DISTRIBUTION SYSTEM.					
		PLANS				250	
		DESIGN					200
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR		250C		1,200C
6. F55		WAINAPANAPA STATE PARK, MAUI					
		PLANS FOR THE PREPARATION OF A MASTER PLAN AND ENVIRONMENTAL IMPACT STATEMENT INCLUDING A CULTURAL IMPACT/ASSESSMENT.					
		PLANS				250	
		TOTAL FUNDING	LNR		250C		C
7. F59		KAUMAHINA STATE WAYSIDE, MAUI					
		DESIGN AND CONSTRUCTION OF NEW COMFORT STATION AND OTHER RELATED ADA IMPROVEMENTS.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN		150			
		CONSTRUCTION		1,000			
		TOTAL FUNDING	LNR	1,150C			C
8.	H09	LANDSCAPING AND PARK IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS TO PARK GROUNDS AND FACILITIES FOR HEALTH, SAFETY, ACCESSIBILITY FOR THE PHYSICALLY CHALLENGED, AND COMPLYING WITH THE FEDERAL CONSENT DECREE.					
		DESIGN		250		250	
		CONSTRUCTION		1,000		1,000	
		TOTAL FUNDING	LNR	1,250C		1,250C	
9.	H45	SACRED FALLS STATE PARK, OAHU					
		PLANS FOR UPDATE TO EVALUATE PHYSICAL ENVIRONMENT WITH RECOMMENDATIONS FOR MITIGATING HAZARDS/LIABILITY TO THE STATE.					
		PLANS		250			
		TOTAL FUNDING	LNR	250C			C
10.	F46A	KOEKE/WAIMEA CANYON STATE PARK COMPLEX, KAUAI					
		PLANS FOR THE PREPARATION OF A DEVELOPMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT INCLUDING A CULTURAL IMPACT ASSESSMENT.					
		PLANS		500			
		TOTAL FUNDING	LNR	500C			C
10A.		STATE PARK IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE IMPROVEMENT AND RENOVATION OF STATE PARKS.					
		PLANS				100	
		DESIGN				300	
		CONSTRUCTION				1,600	
		TOTAL FUNDING	LNR		C	2,000C	
10B.		STATE PARKS, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF COMPOSTING SANITATION UNITS IN WILDERNESS PARKS ON THE ISLAND OF HAWAII.					
		DESIGN				125	
		CONSTRUCTION				625	
		TOTAL FUNDING	LNR		C	750C	
10C.		MOOKINI LUAKINI, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A CULTURAL AND EDUCATIONAL COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS					200 <sup>1</sup>
		DESIGN					800 <sup>1</sup>
		CONSTRUCTION					2200 <sup>1</sup>
		TOTAL FUNDING	LNR		C		3200C <sup>1</sup>
10D.		FRIENDS OF IOLANI PALACE, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO IOLANI PALACE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					500
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR		C		1,500C
<b>LNR801 - OCEAN-BASED RECREATION</b>							
11.	210C	WAILOA BOAT HARBOR IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE REPAIR AND IMPROVEMENT OF DOCK FACILITIES AT WAILOA SMALL BOAT HARBOR; AND IMPROVEMENT AND EXPANSION OF THE TRUCK AND TRAILER PARKING AREA FOR THE WAILOA BOAT RAMP.					
		DESIGN			50		50
		CONSTRUCTION			250		250
		TOTAL FUNDING	LNR		300D		300D
12.	246A	LAHAINA BOAT HARBOR REPLACEMENT, REPAIRS, IMPROVEMENTS, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION OF REPLACEMENT, REPAIRS, IMPROVEMENTS TO LAHAINA BOAT HARBOR PIERS.					
		PLANS			50		
		DESIGN			50		
		CONSTRUCTION					800
		TOTAL FUNDING	LNR		100E		800E
13.	246B	LAHAINA BOAT HARBOR COMFORT STATION REPLACEMENT, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION OF REPLACEMENT OF A COMFORT STATION AT LAHAINA BOAT HARBOR.					
		PLANS			50		
		DESIGN			50		
		CONSTRUCTION					400
		TOTAL FUNDING	LNR		20C		C
			LNR		80N		400N
14.	246C	LAHAINA BOAT HARBOR FERRY PIER, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION OF FERRY PIER AT LAHAINA BOAT HARBOR.					
		PLANS				250	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			250		
		CONSTRUCTION				1,600	
		TOTAL FUNDING	LNR		100C		C
			LNR		400N		1,600N
15.	271A	ALA WAI HARBOR FLOATING DOCKS REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF FLOATING DOCKS F AND G.					
		DESIGN			100		
		CONSTRUCTION				1,200	
		TOTAL FUNDING	LNR		100E		1,200E
16.	275B	WAIANAE BOAT HARBOR PIER REPAIRS AND IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF REPAIRS AND IMPROVEMENTS TO THE CONCRETE PIERS AND FINGER PIERS AT THE WAIANAE SMALL BOAT HARBOR.					
		PLANS			30		
		DESIGN			70		
		CONSTRUCTION				750	
		TOTAL FUNDING	LNR		100C		750C
17.	276A	HALEIWA BOAT HARBOR REPLACEMENT, REPAIRS, AND IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF REPLACEMENT, REPAIRS, IMPROVEMENTS TO HALEIWA BOAT HARBOR.					
		PLANS			40		
		DESIGN			50		
		CONSTRUCTION				900	
		TOTAL FUNDING	LNR		90D		900D
18.	276B	HALEIWA BOAT HARBOR FIRE PROTECTION SYSTEM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF A FIRE PROTECTION SYSTEM.					
		PLANS			10		
		DESIGN			10		
		CONSTRUCTION				100	
		TOTAL FUNDING	LNR		20D		100D
19.	299A	PLANNING FOR BOAT HARBOR FACILITIES, STATEWIDE					
		PLANS FOR CONTINUED STUDIES, RESEARCH, AND ADVANCE PLANNING OF BOAT HARBOR FACILITIES ON ALL ISLANDS.					
		PLANS			125		250
		TOTAL FUNDING	LNR		125D		250D
20.	299B	IMPROVEMENTS TO BOAT HARBOR FACILITIES, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS EXISTING BOAT HARBOR FACILITIES THROUGHOUT THE STATE INCLUDING DREDGING, PAVING, UTILITIES, AND OTHER BERTHING AND SHORE FACILITIES INCLUDING ADMINISTRATIVE OFFICES, AND BOAT RAMPS.					
		PLANS			30		50
		DESIGN			30		70
		CONSTRUCTION			240		480
		TOTAL FUNDING	LNR		300D		600D
21.	299C	BOAT RAMP IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF REPAIRS AND IMPROVEMENTS TO VARIOUS BOAT RAMP FACILITIES, STATEWIDE, INCLUDING DREDGING, PAVING, UTILITIES, LOADING DOCKS, COMFORT STATIONS, AND OTHER FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			50		100
		DESIGN			50		100
		CONSTRUCTION			400		800
		TOTAL FUNDING	LNR		125D		250D
			LNR		375N		750N
21A.		POHOIKI BOAT RAMP AND LOADING DOCK REPLACEMENTS, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE REPLACEMENT OF THE BOAT LAUNCH RAMP AND LOADING DOCK AT POHOIKI BAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					20
		DESIGN					80
		CONSTRUCTION					700
		TOTAL FUNDING	LNR		C		200C
			LNR		N		600N
21B.		MAALAEA BOAT HARBOR LAND ACQUISITION, MAUI					
		LAND ACQUISITION FOR THE PURCHASE OF 1.137 ACRES OF LAND, TAX MAP KEY II-3-8-14-27/ 28/30/31, LOCATED AT THE CORNER OF HAUOLI AND MAALAEA ROAD (HARBOR FRONT).					
		LAND					2,500
		TOTAL FUNDING	LNR		D		2,500D
AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM							
22.	SA0001	ALOHA STADIUM, RENOVATE UPPER AND LOWER CONCOURSE RESTROOMS, OAHU					



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION TO REMOVE EXISTING TOILET FIXTURES AND PARTITIONS AND INSTALL NEW FIXTURES AND PARTITIONS THAT COMPLY WITH THE AMERICANS WITH DISABILITIES ACT; REPLACE TOILET AND RESTROOM DISPENSERS AND OTHER MISC. HARDWARE; AND PERFORM VARIOUS OTHER WORK NEEDED TO SATISFY ARCHITECTURAL, REGULATORY, AND OPERATIONAL REQUIREMENTS OF THE RESTROOM FACILITIES.					
		DESIGN			75		25
		CONSTRUCTION			750		250
		TOTAL FUNDING	AGS		825B		275B

## 22A. SA0002 ALOHA STADIUM, IMPROVEMENTS TO LOWER HALAWA PARKING LOT, OAHU

DESIGN AND CONSTRUCTION TO INSTALL NEW WATER, SEWER, AND ELECTRICAL UTILITY LINES; REPAVE THE DETERIORATED ASPHALT SURFACE; AND CONSTRUCT A CONCESSION/ RESTROOM FACILITY.

DESIGN						180
CONSTRUCTION						2,820
TOTAL FUNDING	AGS			C		3,000C

## 22B. SA0003 ALOHA STADIUM, IMPROVEMENTS TO LOWER LEVEL CONCOURSE, OAHU

DESIGN AND CONSTRUCTION TO REMOVE EXISTING DETERIORATED CORRUGATED STEEL DECKING AND INSTALL NEW STEEL DECKING; REMOVE EXISTING CONCRETE TOPPING AND INSTALL NEW CONCRETE TOPPING; APPLY A NON-SKID WATERPROOF COATING ON CONCOURSE SURFACES; PREPARE ADJACENT SUPPORT AND STRUCTURAL MEMBERS TO ACCOMMODATE DECKING INSTALLATION; AND PERFORM OTHER MISC. CONCOURSE IMPROVEMENT WORK.

DESIGN						100
CONSTRUCTION						900
TOTAL FUNDING	AGS			C		1,000C

## LNR807 - PARK INTERPRETATION

## 23. F02B INTERPRETIVE PROGRAM DEVELOPMENT, STATEWIDE

DESIGN AND CONSTRUCTION FOR A SERIES OF INTERPRETIVE SIGNS AND KIOSKS IN SELECTED STATE PARKS.

DESIGN				10		10
CONSTRUCTION				50		50
TOTAL FUNDING	LNR			60B		60B

## 24. F54B WAILUA RIVER STATE PARK, KAUAI

CONSTRUCTION FOR INTERPRETIVE DEVICES, LANDSCAPING AND RESTORATION OF MALAE HEIAU.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION			250		
		TOTAL FUNDING	LNR		250B		B
25.	F57B	KAHANA VALLEY STATE PARK, OAHU					
		CONSTRUCTION FOR RECONSTRUCTION OF KAM MON STORE AS AN INTERPRETIVE CENTER.					
		CONSTRUCTION					300
		TOTAL FUNDING	LNR		B		300B
26.	F74B	HAENA STATE PARK, KAUAI					
		DESIGN AND CONSTRUCTION TO DEVELOP AN INTERPRETIVE PROGRAM INCLUDING THE RESTORATION OF TARO LO'I.					
		DESIGN			50		
		CONSTRUCTION					200
		TOTAL FUNDING	LNR		50B		200B

## I. PUBLIC SAFETY

## PSD402 - HALAWA CORRECTIONAL FACILITY

## 0A. 20005 HALAWA CORRECTIONAL FACILITY, REPLACE SEWER LINES, OAHU

DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF BADLY DAMAGED SEWER LINES AT THE HALAWA CORRECTIONAL FACILITY.							
		DESIGN					33
		CONSTRUCTION					227
		TOTAL FUNDING	AGS		C		260C

## 0B. 20021 HALAWA CORRECTIONAL FACILITY, LIFE SAFETY CODE IMPROVEMENTS, OAHU

PLANS AND DESIGN FOR FIRE AND LIFE SAFETY CODE IMPROVEMENTS THROUGHOUT THE HALAWA CORRECTIONAL FACILITY.							
		PLANS					40
		DESIGN					413
		TOTAL FUNDING	AGS		C		453C

## PSD403 - KULANI CORRECTIONAL FACILITY

## 0C. P20025 KULANI CORRECTIONAL FACILITY, NEW SEWER SYSTEM, HAWAII

PLANS AND DESIGN FOR A NEW SEWER SYSTEM AT KULANI CORRECTIONAL FACILITY.							
		PLANS					25
		DESIGN					204
		TOTAL FUNDING	AGS		C		229C

## PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER

## 1. 20011 MAUI COMMUNITY CORRECTIONAL CENTER, NEW BED EXPANSION AND RENOVATIONS, MAUI

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE MAUI COMMUNITY CORRECTIONAL CENTER AND/OR ANY SATELLITE ADJUNCTS. FUNDS MAY BE USED TO MATCH FEDERAL FUNDS, AS MAY BE AVAILABLE.					
		PLANS					265
		DESIGN		500			1,000
		CONSTRUCTION					18,400
		EQUIPMENT					335
		TOTAL FUNDING	AGS	500C			20,000C

**PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER**

2. 20012 OAHU COMMUNITY CORRECTIONAL CENTER, SEWER IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION OF SEWER IMPROVEMENTS AT THE OAHU COMMUNITY CORRECTIONAL CENTER.

DESIGN			13	
CONSTRUCTION			78	
TOTAL FUNDING	AGS		91C	C

**PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER**

3. 20013 WOMEN'S COMMUNITY CORRECTIONAL CENTER, NEW ARMORY, OAHU

DESIGN AND CONSTRUCTION OF NEW ARMORY AT THE WOMEN'S COMMUNITY CORRECTIONAL CENTER.

DESIGN			23	
CONSTRUCTION			140	
TOTAL FUNDING	AGS		163C	C

**PSD900 - GENERAL ADMINISTRATION**

4. 20014 GENERAL ADMINISTRATION, TRANSITION HOUSING FOR FEMALE OFFENDERS, STATEWIDE

PLANS FOR TRANSITION HOUSING FOR FEMALE OFFENDERS, STATEWIDE.

PLANS			153	
TOTAL FUNDING	AGS		153C	C

- 4A. 20025 GENERAL ADMINISTRATION, NEW SECURE TREATMENT FACILITY, HAWAII

PLANS FOR A NEW SECURE TREATMENT FACILITY ON HAWAII.

PLANS				1,500
TOTAL FUNDING	AGS		C	1,500C

- 4B. 20026 GENERAL ADMINISTRATION, NEW TRANSITION HOUSING FACILITY, OAHU

PLANS FOR A NEW TRANSITION HOUSING FACILITY ON OAHU.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS					140
		TOTAL FUNDING	AGS		C		140C

## LNR810 - PREVENTION OF NATURAL DISASTERS

## 5. KAHUKU FLOOD CONTROL, OAHU

PLANS FOR A FEASIBILITY STUDY TO REVIEW ALTERNATIVES TO MITIGATE FLOODING IN KAHUKU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		1,000	
TOTAL FUNDING	LNR	500C	C
	LNR	250N	N
	LNR	250S	S

## 5A. WAILUPE STREAM FLOOD CONTROL, OAHU

PLANS, DESIGN, AND CONSTRUCTION TO IMPROVE THE DRAINAGE OF WAILUPE STREAM.

PLANS			100
DESIGN			400
CONSTRUCTION			4,000
TOTAL FUNDING	LNR	C	4,500C

## DEF110 - AMELIORATION OF PHYSICAL DISASTERS

## 6. C13 DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT & UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		1	1
LAND		1	1
DESIGN		70	77
CONSTRUCTION		748	823
EQUIPMENT		146	161
TOTAL FUNDING	AGS	866C	963C
	AGS	100N	100N

## 7. A0201 BIRKHIMER TUNNEL &amp; SUPPORT FACILITIES, HEALTH AND SAFETY REQUIREMENTS, OAHU

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH & SAFETY IMPROVEMENTS TO THE STATE EMERGENCY OPERATING CENTER, BIRKHIMER TUNNEL & SUPPORT FACILITIES TO INCLUDE A FIRE HYDRANT, A FIRE SUPPRESSION SPRINKLER SYSTEM, REMOVAL OF OVERHEAD UTILITY LINES, AND OTHER IMPROVEMENTS.

PLANS		1	
LAND		1	
DESIGN		117	5

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION				250	
		EQUIPMENT				280	
		TOTAL FUNDING	AGS	119C		535C	
7A.	A37	MAUI ARMY NATIONAL GUARD ARMORY, MAUI					
		CONSTRUCTION FOR AN ARMY NATIONAL GUARD CONSOLIDATED FACILITY OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION, UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				3,000	
		TOTAL FUNDING	AGS		C	3,000C	
7B.	C35	ADA AND INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR MODIFICATIONS FOR PERSONS WITH DISABILITIES TO IDENTIFY AND CORRECT EXISTING DEFICIENCIES FOR THE DEPARTMENT OF DEFENSE (DOD) FACILITIES. THIS PROJECT IS NECESSARY TO MEET REQUIREMENTS IN ACCORDANCE WITH STATE AND FEDERAL LAWS. CURRENT BUILDING ACCESSIBILITY DOES NOT MEET ADA CRITERIA FOR ACCESSIBILITY.					
		PLANS				1	
		DESIGN				30	
		CONSTRUCTION				324	
		TOTAL FUNDING	DEF		C	355C	

## J. INDIVIDUAL RIGHTS

## AGR812 - MEASUREMENT STANDARDS

1. 192 01 DOA ANNEX NO.3, NEW MEASUREMENT STANDARDS AND COMMODITIES BUILDING, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT A NEW BUILDING FOR THE MEASUREMENT STANDARDS AND COMMODITIES PROGRAM ON OAHU.

DESIGN		185	
CONSTRUCTION		2,890	
EQUIPMENT		50	
TOTAL FUNDING	AGS	3,125C	C

## CCA191 - GENERAL SUPPORT-PROTECTION OF THE CONSUMER

2. P10049 HAWAII PUBLIC TELEVISION FOUNDATION, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TRANSMISSION SITES AND A DIGITAL BROADCASTING SYSTEM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN			1		
		CONSTRUCTION			1		
		EQUIPMENT		1,998			
		TOTAL FUNDING	CCA	2,000C			C
2A.	L112	OLD FEDERAL BUILDING ACQUISITION AND RENOVATION, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR FEE PURCHASE AND RENOVATION OF THE OLD FEDERAL BUILDING.					
		LAND				3,000	
		DESIGN				2,000	
		CONSTRUCTION				28,000	
		TOTAL FUNDING	AGS		C	33,000C	

## K. GOVERNMENT-WIDE SUPPORT

## GOV100 - OFFICE OF THE GOVERNOR

## 1. G01 PROJECT ADJUSTMENT FUND, STATEWIDE

PLANS FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.

PLANS		1	1
TOTAL FUNDING	GOV	1C	1C

## 2. G03 WASHINGTON PLACE, OAHU

DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO WASHINGTON PLACE. PROJECT MAY INCLUDE REPAIRS AND IMPROVEMENTS.

DESIGN		10	
CONSTRUCTION		190	
TOTAL FUNDING	AGS	200C	C

## BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING

## 3. 00-01 HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995.

CONSTRUCTION		30,000	30,000
TOTAL FUNDING	BUF	30,000C	30,000C

## 4. 00-02 STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.

CONSTRUCTION		79,625	79,066
TOTAL FUNDING	BUF	79,625C	79,066C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
5.	P10050	BISHOP MUSEUM, OAHU					
		CONSTRUCTION FOR THE BISHOP MUSEUM'S SCIENCE LEARNING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION		5,000			
		TOTAL FUNDING	AGS	5,000C			C
<b>AGS131 - INFORMATION PROCESSING SERVICES</b>							
6.	ICSD01	KALANIMOKU BUILDING EMERGENCY GENERATOR, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CONSTRUCTION OF MOUNTING PADS AND PROTECTIVE ENCLOSURES FOR AND TO INSTALL GENERATORS, AUTOMATIC SWITCHES, CONDUITS, ELECTRICAL WIRING AND FUEL TANKS AT THE KALANIMOKU BUILDING.					
		PLANS		100			
		DESIGN		150			
		CONSTRUCTION		1,000			
		EQUIPMENT		750			
		TOTAL FUNDING	AGS	2,000C			C
<b>AGS161 - COMMUNICATION</b>							
7.	ICSD02	RAINBOW NEW RADIO SITES AND TOWERS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT TO SUPPORT THE MODERNIZATION OF THE SHARED STATE AND FEDERAL MICROWAVE SYSTEM TO DIGITAL OPERATION FOR USE BY PUBLIC SAFETY, EMERGENCY, AND CIVIL DEFENSE STATEWIDE CONNECTIONS AND TO SUPPORT THE EQUIPMENT OF MAUI AND HAWAII COUNTIES RADIO AT THESE NEW FACILITIES.					
		PLANS		50			
		LAND		50			
		DESIGN		425			
		CONSTRUCTION		1,620		3,425	
		EQUIPMENT		180		475	
		TOTAL FUNDING	AGS	2,325C		3,900C	
7A.	ICSD07	HAWAIIAN MICROWAVE MODERNIZATION, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE PREVENTION OF TOTAL SYSTEM FAILURE OF HAWAIIAN DIGITAL MICROWAVE BY REPLACING CRITICAL BUT OBSOLETE SYSTEMS. INCLUDES REPLACEMENT OF 18 GHZ MICROWAVE RADIOS ON OAHU, KAUAI, AND HAWAII; REPLACEMENT OF STATION BACKUP BATTERIES AND CHARGERS STATEWIDE, AND REPLACEMENT OF AIR CONDITIONING SYSTEMS ON LANAI AND KAUAI.					
		PLANS					10
		DESIGN					25

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		CONSTRUCTION					50
		EQUIPMENT					1,145
		TOTAL FUNDING	AGS		C		1,230C
<b>LNR101 - PUBLIC LANDS MANAGEMENT</b>							
8.	E78A	KA IWI SCENIC SHORELINE, OAHU					
		DESIGN AND CONSTRUCTION OF ROADWAY, PARKING, UTILITIES, AND NEW LOOKOUT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		10			
		CONSTRUCTION		7,990			
		TOTAL FUNDING	LNR	4,000B			B
			LNR	4,000N			N
9.	E00000	MAUNALAH HEIGHTS SUBDIVISION WATER SYSTEM IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR WATER SYSTEM IMPROVEMENTS AT MAUNALAH HEIGHTS SUBDIVISION TO PROVIDE FIREFLOW PROTECTION.					
		PLANS		25			
		DESIGN		100			
		CONSTRUCTION				555	
		TOTAL FUNDING	LNR	125C		555C	
10.	E79	ACQUISITION OF LAND IN WAIOMAO, PALOLO, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE PURCHASE OF ONE (1) PARCEL OF LAND (HOUSELOT AND IMPROVEMENTS) IN WAIOMAO, PALOLO, OAHU.					
		PLANS				10	
		LAND		505			
		DESIGN				5	
		CONSTRUCTION				180	
		TOTAL FUNDING	LNR	505B		195B	
11A.		PROTECTION OF AGRICULTURAL RESOURCES, MAUI					
		LAND ACQUISITION FOR PROTECTION, MAINTENANCE, AND IMPROVEMENT OF VARIOUS AGRICULTURAL INFRASTRUCTURE ON MAUI.					
		LAND				2,895	
		TOTAL FUNDING	LNR		C	2,895C	
<b>AGS221 - CONSTRUCTION</b>							
12.	B27	ADVANCED PLANNING, STATEWIDE					



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		PLANS FOR PROVIDING ASSISTANCE TO THE PUBLIC, STATE, AND COUNTIES IN MATTERS RELATING TO DAGS' PUBLIC WORKS DIVISION AND INCLUDES THE PREPARATION OF PROGRAMS, REPORTS, STUDIES, INVENTORIES, REVIEWS, AND PERFORMANCE OF ALL NECESSARY ACTIVITIES TO CARRY OUT DAGS' FUNCTIONS.					
		PLANS		225		75	
		TOTAL FUNDING	AGS	225C		75C	
13.	B28	STATE OFFICE BUILDING, REMODELING, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REMODELING AND UPGRADING OF OFFICES OCCUPIED BY STATE AGENCIES IN STATE OWNED SPACE, TO PROVIDE ADEQUATE SPACE FOR AGENCIES TO ACCOMMODATE THEIR OPERATIONAL REQUIREMENTS. PROJECT TO INCLUDE REMODELING FOR REORGANIZATION, PROGRAM CHANGES, STAFFING CHANGES, CORRECTION OF INEFFICIENT OFFICE LAYOUTS, ENERGY CONSERVATION, LIGHTING, VENTILATION, PLUMBING, ELECTRICAL AND DATA SYSTEMS.					
		DESIGN		250		20	
		CONSTRUCTION		1,300		180	
		TOTAL FUNDING	AGS	1,550C		200C	
14.	E109	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATING TO WAGES AND FRINGES FOR PERMANENT, PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS		6,268		6,268	
		LAND		1		1	
		DESIGN		1		1	
		CONSTRUCTION		1		1	
		EQUIPMENT		1		1	
		TOTAL FUNDING	AGS	6,272C		6,272C	
15.	F109	AIR CONDITIONING SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF AIR CONDITIONING SYSTEMS IN STATE BUILDINGS AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		200			
		CONSTRUCTION		1,800			
		TOTAL FUNDING	AGS	2,000C			C

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
16.	H101	STATE OFFICE BUILDINGS, ADA PUBLIC ACCESSIBILITY, STATEWIDE, PHASE II					
		DESIGN AND CONSTRUCTION TO PROVIDE MINIMUM PUBLIC ACCESSIBLE PARKING AND PATHWAY TO ALL PROGRAMS AND AN ADA EVACUATION STUDY FOR ALL STATE OFFICE BUILDINGS SERVING THE PUBLIC.					
		DESIGN		100			
		CONSTRUCTION		900			
		TOTAL FUNDING	AGS	1,000C			C
17.	B101M	HEALTH AND SAFETY REQUIREMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MITIGATION/ELIMINATION OF CONDITIONS HAZARDOUS TO HEALTH AND SAFETY, INCLUDING THE REMOVAL OF HAZARDOUS MATERIALS AND/OR CORRECTIONS OF PHYSICAL CONDITIONS IN STATE FACILITIES TO MEET CURRENT CODE AND/OR SAFETY REQUIREMENTS, STATEWIDE.					
		DESIGN		95		95	
		CONSTRUCTION		660		660	
		EQUIPMENT		5		5	
		TOTAL FUNDING	AGS	760C		760C	
17A.	I105	HILO DAGS BASEYARD, HAWAII					
		PLANS AND DESIGN FOR A HILO DAGS SHOP BASEYARD.					
		PLANS				10	
		DESIGN				263	
		TOTAL FUNDING	AGS		C	273C	
17B.	L102	KAMAMALU BUILDING, ASBESTOS REMOVAL AND BUILDING RENOVATION, OAHU					
		DESIGN FOR ASBESTOS MITIGATION AND INTERIOR RENOVATION OF THE APPROXIMATELY 75,000 GROSS SQUARE FOOT KAMAMALU BUILDING.					
		DESIGN				1,400	
		TOTAL FUNDING	AGS		C	1,400C	
17C.	L105	LUMP SUM SCHOOL BUILDING IMPROVEMENTS, STATEWIDE (PM/CM SERVICES)					
		DESIGN AND CONSTRUCTION FOR PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES DURING THE DESIGN AND CONSTRUCTION OF VARIOUS CAPITAL IMPROVEMENT REPAIR AND MAINTENANCE PROJECTS. STATEWIDE. SERVICES WILL BE CONTRACTED FOR DESIGN COORDINATION AND CONSTRUCTION CONTRACT ADMINISTRATION AND INSPECTION.					
		DESIGN				300	
		CONSTRUCTION				700	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
TOTAL FUNDING			AGS		C		1,000C
AGS233 - BUILDING REPAIRS AND ALTERATIONS							
18. CSD01 LUMP SUM CIP-PUBLIC BUILDING IMPROVEMENTS, STATEWIDE							
DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC OFFICE BUILDINGS, STATEWIDE. PROJECT MAY INCLUDE ROOFING, AIR CONDITIONING, OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC FACILITIES.							
DESIGN				600		1,200	
CONSTRUCTION				4,400		8,800	
TOTAL FUNDING			AGS	5,000C			10,000C
18A. CDS05 STATE CAPITOL, REPLACE LINING AND CIRCULATION SYSTEM IN REFLECTING POOLS, OAHU							
DESIGN TO UPGRADE WATER CIRCULATION AND REPLACE LINING SYSTEM IN REFLECTING POOLS, INCLUDING OTHER WATERPROOFING IMPROVEMENTS AT THE STATE CAPITOL BUILDING.							
DESIGN						360	
TOTAL FUNDING			AGS		C		360C
SUB201 - CITY AND COUNTY OF HONOLULU							
18B. SALT LAKE WATERWAYS, OAHU							
PLANS, DESIGN, AND CONSTRUCTION FOR DREDGING AND DISPOSAL OF MATERIALS FROM SALT LAKE WATERWAYS.							
PLANS						5	
DESIGN						0 <sup>1</sup>	
CONSTRUCTION						15	
TOTAL FUNDING				CCH	C	0 <sup>1</sup>	
				CCH	S	425C	
						0 <sup>1</sup>	
						425S	
						0 <sup>1</sup>	
18C. MOILIILI COMMUNITY CENTER, OAHU							
DESIGN AND CONSTRUCTION FOR THE RENOVATION AND IMPROVEMENT OF MOILIILI COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.							
DESIGN						5	
CONSTRUCTION						135	
TOTAL FUNDING			CCH		C		140C
18D. MANOA COMMUNITY RECREATIONAL FACILITY, OAHU							
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GYMNASIUM EQUIPMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.							

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN					1
		CONSTRUCTION					1
		EQUIPMENT					198
		TOTAL FUNDING	CCH		C		200C
20.	P10052	HILO LANDFILL CLOSURE AND SOLID WASTE MANAGEMENT SYSTEM, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE HILO LANDFILL CLOSURE AND SOLID WASTE MANAGEMENT SYSTEM.					
		PLANS			100		
		DESIGN			899		
		CONSTRUCTION			1		
		TOTAL FUNDING	COH	1,000C			C
21.	P10053	KAWAILANI STREET BRIDGE REPLACEMENT, HAWAII					
		PLANS AND DESIGN TO REPLACE THE KAWAILANI STREET BRIDGE.					
		PLANS			250		
		DESIGN			250		
		CONSTRUCTION					1,000
		TOTAL FUNDING	COH	500C			1,000C
21A.		WATER SOURCE AND DISTRIBUTION SYSTEM, HAWAII					
		PLANS FOR WATER SOURCE IDENTIFICATION AND DISTRIBUTION FOR THE ISLAND OF HAWAII FROM SOUTH POINT TO HOOKENA.					
		PLANS					500
		TOTAL FUNDING	COH		C		500C
<b>SUB401 - COUNTY OF MAUI</b>							
22.	P10054	UPCOUNTRY MAUI WATERSHED PROJECT, MAUI					
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED PROJECT, KULA, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1		
		CONSTRUCTION			1,999		
		TOTAL FUNDING	COM	2,000C			C
<b>SUB501 - COUNTY OF KAUAI</b>							
23.	P10055	ELEELE WATER SYSTEM IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE ELEELE WATER SYSTEM WATERLINE IN THE VICINITY OF ELEELE SCHOOL.					
		DESIGN			80		
		CONSTRUCTION			245		
		TOTAL FUNDING	COK	325C			C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
24.	P10056	LIHUE WATER SYSTEM IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE LIHUE WATER SYSTEM WATERLINE IN THE VICINITY OF KAUAI HIGH SCHOOL.					
		DESIGN		70			
		CONSTRUCTION		265			
		TOTAL FUNDING	COK	335C			C
24A.		WAIMEA SHAFT, WATER TREATMENT FACILITY, KAUAI					
		LAND ACQUISITION AND DESIGN FOR DEVELOPMENT OF A WATER TREATMENT FACILITY AT THE WAIMEA SHAFT.					
		LAND					30
							0 <sup>1</sup>
		DESIGN					130
							0 <sup>1</sup>
		TOTAL FUNDING	COK		C		160C
							0 <sup>1</sup>
24B.		WAILUA/KAPAA WATER SYSTEM, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PUMP, ELECTRICAL CONTROLS, CONNECTING PIPELINE, AND RELATED APPURTENANCES FOR WAILUA HOMESTEADS WELL NO. 3.					
		PLANS					1
							0 <sup>1</sup>
		LAND					60
							0 <sup>1</sup>
		DESIGN					1
							0 <sup>1</sup>
		CONSTRUCTION					98
							0 <sup>1</sup>
		TOTAL FUNDING	COK		C		160C
							0 <sup>1</sup>
24C.		SCHOLASTIC AND INTERNATIONAL COMPETITION SWIMMING POOL AND SUPPORT COMPLEX, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION FOR A 50 METER SWIMMING POOL AND SUPPORT COMPLEX, KAUAI.					
		PLANS					250
							0 <sup>1</sup>
		DESIGN					250
							0 <sup>1</sup>
		CONSTRUCTION					4,000
							0 <sup>1</sup>
		TOTAL FUNDING	COK		C		1,500C
							0 <sup>1</sup>
			COK		S		3,000S
							0 <sup>1</sup>
24D.		OMAO WELL, KAUAI					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2001-02	M O F	FISCAL YEAR 2002-03	M O F
		DESIGN AND CONSTRUCTION FOR AN EXPLORATORY WELL.					
		DESIGN					50 0 <sup>1</sup>
		CONSTRUCTION					400 0 <sup>1</sup>
		TOTAL FUNDING	COK		C		450C 0 <sup>1</sup>
24E.		LIHUE WATER SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR PUMP, ELECTRICAL CONTROLS, CONNECTING PIPELINE, AND APPURTENANCES FOR HANAMAULU WELL NO. 4.					
		DESIGN					45 0 <sup>1</sup>
		CONSTRUCTION					400 0 <sup>1</sup>
		TOTAL FUNDING	COK		C		445C <sup>1</sup> 0 <sup>1</sup>

SECTION 6, Part V, Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, is amended:

(1) By amending section 97 to read as follows:

“SECTION 97. Provided that of the general obligation bond fund appropriation for rental housing services (BED 220), the sum of \$10,000,000 for fiscal biennium 2001-2003 shall be used for design and construction for the demolition and replacement of Kuhio Park Terrace; and provided further that no funds shall be expended unless matched [~~by a sum of not less than \$35,000,000~~] on a 3:1 (federal/state) basis with funds from federal contributions.”

(2) By adding a new section to read as follows:

“SECTION 101.1. Provided that of the special fund appropriation for school-based budgeting (EDN 100), the sum of \$4,900,000 for fiscal biennium 2001-2003 shall be used for the design and construction of gender equity improvements for Roosevelt High School athletic facilities, Oahu.”

(3) By amending section 102 to read as follows:

“SECTION 102. Provided that of the general obligation bond fund appropriation for physical plant operations and maintenance (AGS 807), the sum of \$125,000,000 in fiscal year 2001-2002 and the sum of [~~\$10,000,000~~] \$120,000,000 in fiscal year 2002-2003 shall be expended only for repairs and maintenance of school facilities.”

(4) By amending section 103 to read as follows:

“SECTION 103. Provided that of the general obligation bond fund appropriation for university of Hawaii systemwide support (UOH 900), the sum of \$27,000,000 in fiscal year 2001-2002 and the sum of [~~\$10,000,000~~] \$35,000,000 in

fiscal year 2002-2003 shall be expended only for improvements and repairs and maintenance of university facilities systemwide.”

(5) By adding a new section to read as follows:

“SECTION 104.1. Provided that of the general obligation bond fund appropriation for general support-protection of the consumer (CCA 191), the sum of \$33,000,000 for fiscal year 2002-2003 shall be used for the the acquisition and renovation of the old federal building to be occupied by the department of commerce and consumer affairs.”

(6) By adding a new section to read as follows:

“SECTION 118.1. Act 91, Session Laws of Hawaii 1999, Section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, Section 5, is amended, by amending Item C-94 to read as follows:

“V73 PUUNENE AVENUE/MOKULELE HWY. WIDENING, KUIHELANI HWY. TO PILANI HWY., MAUI

LAND ACQUISITION AND CONSTRUCTION FOR  
WIDENING OF PUUNENE AVENUE AND  
MOKULELE HIGHWAY FROM TWO LANES TO  
FOUR LANES, PHASE I. THIS PROJECT IS  
DEEMED NECESSARY TO QUALIFY FOR  
FEDERAL AID FINANCING AND/OR  
REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY  
FREE)

LAND		4,170	
CONSTRUCTION			43,000
TOTAL FUNDING	TRN	B	[+0,700B] <sup>6</sup>
	TRN	835E	4,000B
	TRN	3,335N	6,700E
			32,300N <sup>7</sup>

(7) By adding a new section to read as follows:

“SECTION 118.2. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

Item No.	Amount (MOF)
A-7	\$ 150,000 C
A-8	200,000 C
A-13	2,251,000 C
A-14	250,000 C
A-15	250,000 C
A-16	30,000 C
A-16D	5,000 C
A-16E	10,000 C
A-16G	25,000 C
B-1	800,000 C
C-58	4,600,000 X
C-64	535,000 E
C-85J	700,000 E
C-95	1,550,000 E

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-118</u>	<u>1,757,000 N</u>
<u>D-4</u>	<u>4,734 C</u>
<u>D-5</u>	<u>95,163 C</u>
<u>D-6</u>	<u>35,000 C</u>
<u>D-7</u>	<u>112,030 C</u>
<u>F-2</u>	<u>2,950,000 C</u>
<u>G-29</u>	<u>420,000 C</u>
<u>G-32</u>	<u>400,000 C</u>
<u>G-36</u>	<u>1,000,000 C</u>
<u>G-37</u>	<u>1,000,000 C</u>
<u>G-41</u>	<u>226,000 C</u>
<u>G-42</u>	<u>50,000 C</u>
<u>G-49</u>	<u>45,000 C</u>
<u>G-50</u>	<u>50,000 C</u>
<u>G-53</u>	<u>375,000 C</u>
<u>G-56</u>	<u>50,000 C</u>
<u>G-57</u>	<u>75,000 C</u>
<u>G-58</u>	<u>65,000 C</u>
<u>G-64</u>	<u>110,000 C</u>
<u>G-68</u>	<u>50,000 C</u>
<u>G-71</u>	<u>200,000 C</u>
<u>G-87</u>	<u>325,000 C</u>
<u>G-91</u>	<u>800,000 C</u>
<u>H-4</u>	<u>16,246 C</u>
<u>H-5</u>	<u>560,000 B</u>
<u>H-8</u>	<u>400,000 C</u>
<u>H-14A</u>	<u>2,500,000 D</u>
<u>H-16</u>	<u>60,000 B</u>
<u>H-17</u>	<u>250,000 B</u>
<u>I-4B</u>	<u>3,000,000 C</u>
<u>K-3</u>	<u>14,400,000 N</u>
<u>K-4</u>	<u>828,129 C</u>
<u>K-5</u>	<u>46,845 C</u>
<u>K-8</u>	<u>500,000 B</u>
<u>K-9</u>	<u>400,000 B</u>
<u>K-11</u>	<u>2,895,000 C</u>
<u>K-20</u>	<u>1,404,000 C</u>
<u>K-22A</u>	<u>5,000,000 C</u>
<u>K-24A</u>	<u>286,000 C</u>
<u>K-29</u>	<u>160,000 C</u>
<u>K-30</u>	<u>450,000 C</u>
<u>K-30A</u>	<u>160,000 C</u>
<u>K-30C</u>	<u>445,000 C</u>

(8) By adding a new section to read as follows:

“SECTION 118.3. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 91, Session Laws of Hawaii 1999, section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:



<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-88</u>	<u>\$ 3,650,000 N</u>
<u>K-28</u>	<u>2,000,000 C''</u>

(9) By adding a new section to read as follows:

“SECTION 118.4. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-1</u>	<u>\$ 22,105 C</u>
<u>A-13</u>	<u>269,629 C</u>
<u>A-13C</u>	<u>1,286 C</u>
<u>C-159M</u>	<u>4,500,000 N</u>
<u>C-159O</u>	<u>5,200,000 N</u>
<u>C-159P</u>	<u>13,040,000 N</u>
<u>C-159Q</u>	<u>30,560,000 N</u>
<u>C-215</u>	<u>387,000 N</u>
<u>E-22</u>	<u>583,000 C</u>
<u>G-1</u>	<u>691,193 B</u>
<u>G-17</u>	<u>313 B</u>
<u>G-45</u>	<u>607,430 B</u>
<u>H-19</u>	<u>7,388 C</u>
<u>H-22</u>	<u>343,350 C</u>
<u>H-34</u>	<u>323,500 C</u>
<u>H-40</u>	<u>18,518 B</u>
<u>I-7</u>	<u>3,430,000 C</u>
<u>K-3</u>	<u>15 C''</u>

(10) By adding a new section to read as follows:

“SECTION 118.5. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 328, Session Laws of Hawaii 1997, section 140A, as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-5</u>	<u>\$ 3,200 C</u>
<u>C-116</u>	<u>1,675,000 E</u>
<u>C-116</u>	<u>6,705,000 N</u>
<u>C-117</u>	<u>2,292,000 N</u>
<u>C-140</u>	<u>2,700,000 N</u>
<u>C-142</u>	<u>1,200,000 N</u>
<u>C-159F</u>	<u>822,000 N</u>
<u>C-159H</u>	<u>1,600,000 N</u>
<u>C-159H</u>	<u>400,000 R</u>
<u>C-159I</u>	<u>1,800,000 N</u>
<u>C-159I</u>	<u>450,000 R</u>
<u>C-171C</u>	<u>285,000 N</u>
<u>C-184</u>	<u>1,384,000 N</u>

<u>Item No.</u>	<u>Amount (MOF)</u>
C-185	1,200,000 N
C-186	530,000 N
C-194	13,110,000 N
C-200	4,200,000 N
C-201	225,000 N
C-206C	225,000 N
C-210	1,230,000 N
D-10	470,000 N
H-30	14 D
I-13	150,000 N
I-15B	15,000 C
I-15B	45,000 N
I-15C	15,000 C
I-15C	45,000 N
I-15D	15,000 C
I-15D	45,000 N
I-15E	15,000 C
I-15E	45,000 N
I-15F	15,000 C
I-15F	45,000 N
I-15G	15,000 C
I-15G	45,000 N
I-15H	15,000 C
I-15H	45,000 N
I-15I	15,000 C
I-15I	45,000 N''

(11) By adding a new section to read as follows:

“SECTION 118.6. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-0A	\$ 87,061 C
A-25A	8,713 C
C-85B	7,000,000 N
D-4	3,550 C
D-5	4,000 C
D-7	22,450 C
E-9	27,102 C
G-13	5,146 C
G-32	25,000 C
G-36	249,138 B
G-51	19,950 C
G-82	645 C
G-82A	220,462 C
G-98	243,756 C
G-100	38,696 C
K-16	20,754 C
K-17	19,109 C''

(12) By adding a new section to read as follows:

“SECTION 118.7. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-25	\$ 500,000 E
C-25	2,000,000 N
C-26	4,233,000 N
C-28	10,000 E
C-28	320,000 N
C-30	5,490,000 N
C-34	3,023,000 N
C-35	181,000 N
C-45	15,728,000 N
C-45	4,080,000 R
C-47	1,959,000 N
C-49M	1,936,000 N
C-49O	10,331,000 N
C-49Q	6,225,000 N
C-51	98,000 N
C-55	302,000 N
C-57	423,000 N
C-59	200,000 E
C-59	800,000 N
C-70	383,000 N
C-71	1,134,000 N
C-72	251,000 N
C-77	1,416,000 N
C-78	2,604,000 N
C-81	9,466,000 N
C-84	69,500 C
C-84	6,201,000 N
G-79	372,574 C”

(13) By adding a new section to read as follows:

“SECTION 118.8. Any law to the contrary notwithstanding, the appropriations under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-2	\$ 9,941 C
E-10	1,573 C
E-18A	22,141 C
G-76A	218 C
G-86B	166 C
G-102A	9,708 C

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>K-11</u>	<u>71,476 C</u>
<u>K-14</u>	<u>1,000 C</u> ”

(14) By adding a new section to read as follows:

“SECTION 118.9. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-6</u>	<u>\$ 4,431 C</u>
<u>A-6</u>	<u>9,000,000 N</u>
<u>C-39</u>	<u>407,000 J</u>
<u>C-60</u>	<u>42,000 N</u>
<u>C-79</u>	<u>4,783,000 N</u>
<u>H-9</u>	<u>446 C</u> ”

(15) By adding a new section to read as follows:

“SECTION 118.10. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-2</u>	<u>\$ 156,100 C</u>
<u>A-4</u>	<u>1,000 C</u>
<u>A-18</u>	<u>140,600 C</u>
<u>C-37</u>	<u>13,467,000 K</u>
<u>C-40</u>	<u>47,090,000 J</u>
<u>C-46</u>	<u>156,000 N</u>
<u>C-52</u>	<u>753,000 J</u>
<u>C-60</u>	<u>1,000 B</u>
<u>D-13</u>	<u>900,000 C</u>
<u>F-3A</u>	<u>5,000 C</u>
<u>F-4</u>	<u>628 C</u>
<u>F-6</u>	<u>900 C</u>
<u>G-88</u>	<u>2,652 C</u>
<u>G-116</u>	<u>60,271 C</u>
<u>G-142</u>	<u>6,855 C</u>
<u>H-4</u>	<u>6,200 C</u>
<u>H-15</u>	<u>5,000 C</u>
<u>H-19</u>	<u>58,160 C</u>
<u>H-34</u>	<u>3,909 D</u>
<u>H-44</u>	<u>6,435 C</u>
<u>I-4</u>	<u>103,993 C</u>
<u>I-7</u>	<u>24,014 C</u>
<u>K-5</u>	<u>455 C</u>
<u>K-17</u>	<u>22,000 C</u>
<u>K-18</u>	<u>5,374 C</u>

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>K-19</u>	<u>98,000 C</u>
<u>K-20</u>	<u>35,000 C''</u>

(16) By adding a new section to read as follows:

“SECTION 118.11. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-90</u>	<u>\$ 11,186 D</u>
<u>C-90</u>	<u>3,914,000 N</u>
<u>F-3</u>	<u>13,027 C</u>
<u>H-18</u>	<u>36,969 C</u>
<u>H-35</u>	<u>14,253 C''</u>

(17) By adding a new section to read as follows:

“SECTION 118.12. Any law to the contrary notwithstanding, the appropriations under Act 317, Session Laws of Hawaii 1991, section 2, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>F-6</u>	<u>\$ 370 C</u>
<u>G-92</u>	<u>5,000 C''</u>

(18) By adding a new section to read as follows:

“SECTION 118.13. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-42</u>	<u>\$ 53,790 D</u>
<u>C-42</u>	<u>12,869,000 K</u>
<u>C-45</u>	<u>125,000 N</u>
<u>C-55</u>	<u>900,000 J</u>
<u>C-56</u>	<u>540,000 J</u>
<u>G-151</u>	<u>168,107 C</u>
<u>G-167</u>	<u>327,987 C</u>
<u>H-1</u>	<u>2,321 C</u>
<u>K-22</u>	<u>10,871 C</u>
<u>K-23B</u>	<u>316,107 C''</u>

(19) By adding a new section to read as follows:

“SECTION 118.14. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 316, Session Laws of Hawaii 1989, section 222, as

amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-30A	\$ 124 C
C-39	900,000 J
C-40	769,000 J
C-41	431,024 D
C-41	73,947,000 J
C-51	1,148,000 K
C-60	37,000 B
C-60	2,106,186 C
C-62B	6,534 C
C-64	1,725,000 B
C-64	54,222 C
C-67	11,284,000 K
C-70A	5 C
C-70A	181,000 K
C-78	673,000 N
D-11	300 C
H-13	10,465 C
H-14	12,647 C
H-23	730 C
I-11	5,982 C''

(20) By adding a new section to read as follows:

“SECTION 118.15. Any law to the contrary notwithstanding, the appropriation under Act 391, Session Laws of Hawaii 1988, section 2, in the amount of \$7,188 or balance thereof, unallotted, allotted, encumbered and unrequired, is hereby lapsed.”

(21) By adding a new section to read as follows:

“SECTION 118.16. Any law to the contrary notwithstanding, the appropriations under Act 216, Session Laws of Hawaii 1987, section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-26	\$ 16,000 C
C-25A	34,160 D
F-20	13,307 C
F-21	104,882 D
G-57	1,674 C
G-62	12,782 C
G-68	1,642 C
G-78	150,000 C
G-80	3,240 C
I-3C	50,000 C
K-28A	460 C''

(22) By adding a new section to read as follows:

“SECTION 118.17. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 216, Session Laws of Hawaii 1987, section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-17A	\$ 3,461 C
C-39	1,383 D
C-43	20 D
C-44	42,583 D
C-45	791 D
C-46	1 D
C-47	18,912 D
C-50	7,444 D
C-62	1 D
C-65	54,395 D
C-68	20,486 D
C-72	43,746 D
C-80	21,616 D
C-84	2,111 D
C-89	50,630 D
H-40	200,001 C
H-48A	80,000 C
H-51A	250,980 C”

(23) By adding a new section to read as follows:

“SECTION 118.18. Any law to the contrary notwithstanding, the appropriation under Act 217, Session Laws of Hawaii 1987, section 2, in the amount indicated or balance thereof, unallotted, allotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
H-1	\$ 22,903 C”

(24) By adding a new section to read as follows:

“SECTION 118.19. Any law to the contrary notwithstanding, the appropriation under Act 347, Session Laws of Hawaii 1987, section 2, in the amount indicated or balance thereof, unallotted, allotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-4	\$ 5,000 C”

(25) By adding a new section to read as follows:

“SECTION 118.20. Any law to the contrary notwithstanding, the appropriations under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-15</u>	<u>\$ 51,265 C</u>
<u>E-5</u>	<u>1,900 C</u>
<u>H-66</u>	<u>3,253 D</u>
<u>K-1</u>	<u>4,359 C</u>
<u>K-12</u>	<u>536 C</u>
<u>K-26</u>	<u>1,037 C''</u>

(26) By adding a new section to read as follows:

“SECTION 118.21. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-10</u>	<u>\$ 40,114 C</u>
<u>C-30</u>	<u>2,737 D</u>
<u>C-32</u>	<u>15,027 D</u>
<u>C-33</u>	<u>48,681 D</u>
<u>C-34</u>	<u>118,909 D</u>
<u>C-36</u>	<u>1 D</u>
<u>C-37</u>	<u>18,446 D</u>
<u>C-39</u>	<u>101,983 D</u>
<u>C-42A</u>	<u>170,377 D</u>
<u>C-50</u>	<u>337 D</u>
<u>C-54</u>	<u>3,528 D</u>
<u>C-55</u>	<u>11,185 D</u>
<u>C-58</u>	<u>293,850 D</u>
<u>C-59</u>	<u>2 D</u>
<u>C-63</u>	<u>187,210 D</u>
<u>D-5</u>	<u>1,671 C</u>
<u>H-29</u>	<u>7,928 C</u>
<u>H-48</u>	<u>4,358 C</u>
<u>H-53</u>	<u>8,279 C</u>
<u>H-66A</u>	<u>216,140 C''</u>

(27) By adding a new section to read as follows:

“SECTION 118.22. Any law to the contrary notwithstanding, the appropriations under Act 301, Session Laws of Hawaii 1983, section 80, as amended and renumbered by Act 285, Session Laws of Hawaii 1984, section 7, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>K-1</u>	<u>\$ 1,928 C</u>
<u>K-6</u>	<u>7,486 C</u>
<u>K-6</u>	<u>1,081 D''</u>

(28) By adding a new section to read as follows:



“SECTION 118.23. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 301, Session Laws of Hawaii 1983, section 80, as amended and renumbered by Act 285, Session Laws of Hawaii 1984, section 7, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-36	\$ 194,019 D
C-37	233,895 D
C-41	11,164 D
C-44	2 D
C-47	6 D
C-48	1 D
C-49	105,224 D
C-53	4,073 D
C-58	22,631 D”

(29) By adding a new section to read as follows:

“SECTION 118.24. Any law to the contrary notwithstanding, the appropriations under Act 1, First Special Session Laws of Hawaii 1981, section 104, as amended and renumbered by Act 264, Session Laws of Hawaii 1982, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
III-E-7	\$ 2,350 C”

(30) By adding a new section to read as follows:

“SECTION 118.25. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 1, First Special Session Laws of Hawaii 1981, section 92, as amended and renumbered by Act 264, Session Laws of Hawaii 1982, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-38	\$ 223,618 D
C-39	4,350 D
C-40	5 D
C-41	9 D
C-45	9,807 D
C-46	5,663 D
C-50	230,270 D
C-54A	368,182 D
C-57	60,362 D
H-17A	250,809 C”

(31) By adding a new section to read as follows:

“SECTION 118.26. Any law to the contrary notwithstanding, the appropriations under Act 214, Session Laws of Hawaii 1979, section 120, as amended and renumbered by Act 300, Session Laws of Hawaii 1980, section 7, in the amounts

indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-46B</u>	<u>\$ 11,082 D''</u>

(32) By adding a new section to read as follows:

“SECTION 118.27. Any law to the contrary notwithstanding, the appropriations under Act 10, Special Session Laws of Hawaii 1977, section 86, as amended and renumbered by Act 243, Session Laws of Hawaii 1978, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>E-10</u>	<u>\$ 46,825 C''</u>

(33) By adding a new section to read as follows:

“SECTION 118.28. Any law to the contrary notwithstanding, the appropriations under Act 195, Session Laws of Hawaii 1975, as amended and renumbered by Act 226, Session Laws of Hawaii 1976, section 7, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>IV-N-95</u>	<u>\$ 5,000 C''</u>

(34) By adding a new section to read as follows:

“SECTION 118.29. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1973, section 72, as amended and renumbered by Act 218, Session Laws of Hawaii 1974, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>F-4</u>	<u>\$ 36,466 C''</u>

(35) By adding a new section to read as follows:

“SECTION 118.30. Any law to the contrary notwithstanding, the appropriations under Act 197, Session Laws of Hawaii 1971, section 2, in the amounts indicated or balances thereof, unallotted, allotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>I-K-65</u>	<u>\$ 5,023 C''</u>

(36) By adding a new section to read as follows:

“SECTION 118.31. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 195, Session Laws of Hawaii 1975, section 88, as amended and renumbered by Act 226, Session Laws of Hawaii 1976, section 6,

including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2003.”

(37) By adding a new section to read as follows:

“SECTION 118.32. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 10, First Special Session Laws of Hawaii 1977, section 86, as amended and renumbered by Act 243, Session Laws of Hawaii 1978, section 5, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2003.”

(38) By adding a new section to read as follows:

“SECTION 118.33. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 214, Session Laws of Hawaii 1979, section 120, as amended and renumbered by Act 300, Session Laws of Hawaii 1980, section 7, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2003.”

(39) By adding a new section to read as follows:

“SECTION 118.34. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 263, Session Laws of Hawaii 1982, section 2, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2003.”

(40) By adding a new section to read as follows:

“SECTION 118.35. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 347, Session Laws of Hawaii 1986, section 2, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2003.”

(41) By adding a new section to read as follows:

“SECTION 118.36. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 300, session Laws of Hawaii 1990, section 2, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2003.”

SECTION 7. Part VII, Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, is amended:

(1) By adding a new section to read as follows:

SECTION 146.1. Provided that the department of education is authorized to transfer the following position titles and position numbers: school food service supervisors number 30229, 19126, 36108, 50316, 50317, accountant IV 28842, account clerk IV 36219, clerk typist II 26674, 36109, and 41278, and the incumbent employees currently being funded with federal fund appropriations and the above incumbents shall be granted permanent status in these positions without loss of salary, seniority, prior service credit, accrued vacation, sick leave, or other prior employee benefits or privileges and without necessary examination; and provided further that such employees possess the minimum qualifications for the positions to which appointed for the purpose of establishing a state agency office for United States department of agriculture (USDA) food nutrition program in the department of education superintendent's office to resolve USDA food nutrition service program concerns.”

(2) By amending section 150 to read as follows:

“SECTION 150. The governor may authorize the transfer of positions and funds [from] between the department of health [to] and the department of education to address Felix Consent Decree requirements; provided further that any transfers shall be based on the transfer of responsibility for Felix clients and/or treatments [from] between the department of health [to] and the department of education; and provided further that the departments shall prepare and submit to the legislature a detailed quarterly transfer report no later than ten days after the end of each quarter.”

(3) By amending section 160 to read as follows:

“SECTION 160. Provided that, of the respective appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$2,500 in fiscal year 2001-2002 and the sum of \$2,500 in fiscal year 2002-2003 shall be made available in each department to be established as a separate account for a protocol fund to be expended at the discretion of the executive heads of such departments which are respectively known as its directors, chairpersons, comptroller, adjutant-general, superintendent, librarian, president, and attorney general.”

(4) By adding a new section to read as follows:

“SECTION 167.1. Provided that with the approval of the director of finance, the department of health may transfer to the department of human services funds appropriated to the department of health for the care and treatment of patients whenever the department of human services can utilize such funds to match federal funds to finance the cost of outpatient, hospital, or skilled nursing home care of indigents or medical indigents.”

(5) By adding a new section to read as follows:

“SECTION 167.2. Provided that the Governor is authorized to transfer operation funds between any State program appropriation with the same means of financing for the purpose of providing vacation termination payments to employees affected by the change in administration, provided further that a report of all transfers made for this purpose shall be submitted to the legislature no later than twenty days prior to the 2003 regular session.”

(6) By adding a new section to read as follows:

“SECTION 167.3. Provided that the department of budget and finance shall perform a review of the home and community-based waiver program in developmental disabilities (HTH 501) of the department of health; provided further that the review shall include but not be limited to determining the feasibility of providing services through the department of human services rather than the department of health; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2003 regular session.”

(7) By adding a new section to read as follows:

“SECTION 167.4. Provided that of the appropriations authorized for executive programs in part II of this Act for fiscal year 2001-2002 and fiscal year 2002-2003, settlements and judgments approved by the legislature in section 5, 6, 7, 8, 9, and 12 of S.B. No. 2682 (the Claims Bill) shall be funded within each program's departmental allocation for the respective fiscal year.”

(8) By adding a new section to read as follows:

“SECTION 167.5. Provided that, in the event that the amount of settlements and judgments approved by the legislature in sections 5, 6, 7, 8, 9, and 12 of S.B No. 2682 (the Claims Bill) exceeds program allocations for fiscal year 2001-2002 or fiscal year 2002-2003, as applicable, for the purposes of meeting such obligations:

(1) A department with the approval of the governor, is authorized to utilize allocated savings determined to be available from any other program within the department; and

(2) Unless otherwise provided by general law, the governor is authorized to transfer funds between allocations of appropriations within a department, for the purposes of paying settlements and judgments of a program.”

(9) By adding a new section to read as follows:

“SECTION 167.6. Provided that of the appropriation authorized for executive programs in part II of this Act for fiscal year 2001-2002, and fiscal year 2002-2003, departments may advance and be reimbursed for costs associated with providing transition support to the Hawaii employer-union health benefits trust fund in fiscal year 2001-2002 and fiscal year 2002-2003; provided further that these reimbursements shall be made to departments expending funds used to provide transition assistance to the Hawaii employer-union health benefits trust fund; provided further that departments that are reimbursed by the Hawaii employer-union health benefits trust fund for transition related general fund expenditures shall lapse a corresponding amount of general funds at the end of the applicable fiscal year in which the expenditures were made.”

(10) By adding a new section to read as follows:

“SECTION 167.7 The department of accounting and general services shall prepare a report sorted by department, by means of financing, and by the year the funds were appropriated for all encumbered contract and encumbered claim balances for accounts that are two years old or older. For all accounts that are older than five years the expending agency shall include in the report an explanation as to the purpose of the claim or contract, the actual or projected date of receipt of the goods or services, and the expected date and amount of final payment for goods delivered or services rendered. This report shall be submitted to the legislature within 45 days of the end of the fiscal year.”

SECTION 8. If any portion of this Act or its application to any person, entity or circumstance is held to be invalid for any reason, then it is hereby declared that the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objectives of such appropriation to the extent possible.

SECTION 9. In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the bracketed material or the underscoring.<sup>13</sup>

SECTION 11. Nothing in this Act shall affect the validity or continuing effectiveness of any provisions of Act 259, Session Laws of Hawaii 2001, as

amended by Act 3, Third Special Session Laws of Hawaii 2001, not repealed or modified by this Act.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

Notes

1. Item vetoed, replaced, and initialed "BJC".
2. Prior to amendment "and provided further that any funds not expended for these purposes shall be lapsed to the harbor special fund." appeared here.
3. The "s" should be underscored.
4. "The" should be underscored.
5. Prior to amendment "\$9,941,842" appeared here.
6. So in original.
7. Prior to amendment "sessions" appeared here.
8. Prior to amendment "used" appeared here.
9. Prior to amendment "\$122,009,632" appeared here.
10. Prior to amendment "," appeared here.
11. Prior to amendment the word "expended" appeared here. "Used to pay" should be underscored.
12. "The" should be underscored.
13. Edited accordingly.

ACT 178

H.B. NO. 2827

A Bill for an Act Relating to the State Finances.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§28- Litigation deposits trust fund.** (a) There is created in the state treasury the litigation deposits trust fund. There shall be deposited into this fund all moneys received through any civil action in which the State is a party where the settlement amount is \$100,000 or higher, except for those actions involving departments able to procure their own legal services as provided for by section 28-8.3 and where no other state statute or court order specifically provides for the deposit of moneys received through the action.

(b) The fund shall be administered by the department of the attorney general. The department shall maintain accounting records of fund moneys, including subsidiary records of individual litigation deposits and disbursements thereof. Moneys in the fund may be separated into subsidiary accounts; provided that one subsidiary account shall not be commingled with moneys from another account except for deposit or investment purposes under subsection (d).

(c) Disbursements from each account maintained under subsection (b) may include attorney's fees and other necessary expenses that the department determines to be reasonable and directly related to prosecution of the civil action for which the account is maintained; provided that in the case of moneys deposited as a result of recoveries by an agency to which a non-general fund applies, the moneys shall be held and disbursed intact for deposit to the credit of the non-general fund. Money deposited in the fund pursuant to an order of the court shall be disbursed in accordance with the order of the court. Any residual funds remaining in an account shall be transferred to the respective non-general or general fund with which the civil

action is associated no later than thirty days after the civil action for which the account is maintained is closed and all costs of that civil action have been paid, unless otherwise provided for by statute.

(d) Moneys in the fund may be invested by the department in securities as provided by section 36-21. Investment earnings shall be deposited in the general fund.

(e) The department shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on:

- (1) The transactions, by subsidiary account, that take place in the fund for each fiscal year; and
- (2) A summary of the collections made in any amount on behalf of other departments and agencies specifying the appropriate number of transactions and amount collected for each department and agency.”

SECTION 2. Chapter 37, part III, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§37- Criteria for the establishment and continuance of special funds.** Special funds shall only be established pursuant to an act of the legislature. The legislature, in establishing or reviewing a special fund to determine whether it should be continued, shall ensure that the special fund:

- (1) Serves the purpose for which it was originally established;
- (2) Reflects a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- (3) Provides an appropriate means of financing for the program or activity; and
- (4) Demonstrates the capacity to be financially self-sustaining.

**§37- Criteria for the establishment and continuance of revolving funds.** Revolving funds shall only be established pursuant to an act of the legislature. The legislature, in establishing or reviewing a revolving fund to determine whether it should be continued, shall ensure that the revolving fund:

- (1) Serves the purpose for which it was originally established;
- (2) Reflects a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process;
- (3) Provides an appropriate means of financing for the program or activity; and
- (4) Demonstrates the capacity to be financially self-sustaining.

**§37- Criteria for the establishment and continuance of administratively established accounts and funds.** Any department or agency that administratively establishes any new account or fund shall, within thirty working days of its establishment, transmit a report to the legislature. The report to the legislature shall include:

- (1) The justification for the establishment of the account or fund; and
- (2) The sources of revenue for the fund.

Each department or agency shall, at least twenty days prior to the convening of each regular session, submit a report to the legislature. The report shall include:

- (1) A list of all administratively established accounts or funds; and
- (2) All revenues, expenditures, encumbrances, and ending balances of each account or fund."

SECTION 3. Section 328L-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The legislature may make appropriations from the fund for the following purposes:

- (1) To maintain levels of programs determined to be essential to [the] public health, safety, [and] welfare[:], and education;
- (2) To provide for counter cyclical economic and employment programs in periods of economic downturn;
- (3) To restore facilities destroyed or damaged or services disrupted by disaster in any county; and
- (4) To meet other emergencies when declared by the governor or determined to be urgent by the legislature.

Any act making appropriations from the emergency and budget reserve fund shall include a declaration of findings and purposes setting forth the purposes, the amounts, and the reasons why the appropriations are necessary and shall require a two-thirds majority vote of each house of the legislature."

## PART II

SECTION 4. The legislature finds that the auditor conducted an update of its 1992 *Loss of Budgetary Control: A Summary Report of the Review of Special and Revolving Funds* (report no. 92-14). Report no. 92-14 provided an overview of five reports issued in 1991 and 1992 that reviewed all special and revolving funds in existence as of July 1, 1990, of sixteen state departments, the University of Hawaii, and the judiciary. This update examined all special and revolving funds created since July 1, 1990, that are administered by, or are administratively attached to, the same eighteen agencies. The update also included a review of significant operational changes for those funds reviewed in the auditor's 1991 and 1992 reports on the same matter.

Since July 1, 1990, seventy-one special and revolving funds have been repealed or discontinued. However, according to the auditor's July, 2001, update of report no. 92-14, a majority (one hundred six out of one hundred sixty-six) of the special and revolving funds previously reviewed were still in existence as of July 1, 1999. The auditor also found that few of the one hundred six special and revolving funds have undergone significant changes since they were last reviewed. The auditor also found thirty-one special and revolving funds previously reviewed in 1991 and 1992, which were in existence as of July 1, 1999, still did not meet all established criteria. The fiscal year 1999-2000 ending cash balance of these thirty-one funds totaled approximately \$77,400,000.

The auditor also found that one hundred thirty-two special and revolving funds have been statutorily or administratively created since July 1, 1990, but twenty-five of these funds have since been repealed or discontinued. The aggregate cash balance of the special and revolving funds created after July 1, 1990, and still in existence as of June 30, 2000, totaled approximately \$220,000,000. However, the auditor found that thirty-eight of these special and revolving funds did not meet all criteria of a special or revolving fund and held over \$19,000,000 outside the general fund.

Despite the proliferation of special and revolving funds, the legislature believes that there are many methods available to the legislature to strengthen its control over non-general funds.



The purpose of this part is to reclassify, repeal, or discontinue certain revolving and special funds following the recommendations of the auditor.

SECTION 5. Section 302A-806, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-806 Hawaii teacher standards board [revolving] special fund.** There is established within the state treasury a [revolving] special fund to be known as the Hawaii teacher standards board [revolving] special fund, into which shall be deposited all moneys received by the board in the form of appropriations, fees, fines, grants, donations, or revenues regardless of their source. The [revolving] special fund shall be administered by the department and used to pay the expenses of the board, including but not limited to the payment of all operational and personnel costs, and reimbursements to board members for travel expenses incurred.”

SECTION 6. Section 304-8.86, Hawaii Revised Statutes, is amended to read as follows:

**“[§304-8.86] University of Hawaii workers’ compensation and unemployment insurance compensation [revolving] trust fund.** There is established a University of Hawaii workers’ compensation and unemployment insurance compensation [revolving] trust fund into which shall be deposited all revenues derived from assessments for workers’ compensation costs and unemployment insurance compensation costs against the [revolving fund]<sup>1</sup> payroll of University of Hawaii employees. Revenues deposited into this account may be expended by the university for all costs and expenses associated with the administration of the university’s workers’ compensation and unemployment insurance compensation programs, including benefits payments, claims administration, settlements, insurance premiums, and legal fees.”

SECTION 7. Section 81-3, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 201G-325, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 201G-342, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 201G-421, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 206E-109, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 304-8.85, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 346E-15, Hawaii Revised Statutes, is repealed.

### PART III

SECTION 14. The legislature determines that there is in the agricultural loan reserve fund at least \$1,800,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of \$1,800,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 15. The legislature determines that there is in the agricultural loan revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July

1, 2002, the director of finance is authorized to transfer from the agricultural loan revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 16. The legislature determines that there is in the animal quarantine special fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the animal quarantine special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 17. The legislature determines that there is in the pesticide use revolving fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the pesticide use revolving fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 18. The legislature determines that there is in the stadium special fund at least \$4,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 19. The legislature determines that there is in the state motor pool revolving fund at least \$600,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the state motor pool revolving fund to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 20. The legislature determines that there is in the state parking revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the state parking revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 21. The legislature determines that there is in the cigarette tax stamp enforcement special fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the cigarette tax stamp enforcement special fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 22. The legislature determines that there is in the medicaid investigations recovery fund at least \$800,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$800,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 23. The legislature determines that there is in the litigation settlement fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the litigation settlement fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 24. The legislature determines that there is in the state identification revolving fund at least \$600,000 in excess of the requirements of the fund. On

July 1, 2002, the director of finance is authorized to transfer from the state identification revolving fund to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 25. The legislature determines that there is in the dwelling unit revolving fund at least \$23,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the dwelling unit revolving fund to the general fund the sum of ~~\$23,000,000~~ \$12,000,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 26. The legislature determines that there is in the fee simple residential revolving fund at least \$300,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the fee simple residential revolving fund to the general fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 27. The legislature determines that there is in the foreign-trade zones special fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the foreign trade zones special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 28. The legislature determines that there is in the Hawaii capital loan revolving fund at least \$4,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Hawaii capital loan revolving fund to the general fund the sum of ~~\$4,000,000~~ \$2,000,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 29. The legislature determines that there is in the Hawaii community development revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Hawaii community development revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 30. The legislature determines that there is in the Hawaii innovation development fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Hawaii innovation development fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 31. The legislature determines that there is in the high technology special fund at least \$250,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the high technology special fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 32. The legislature determines that there is in the homes revolving fund at least \$1,500,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the homes revolving fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 33. The legislature determines that there is in the housing finance revolving fund at least \$5,000,000 in excess of the requirements of the fund. On July

1, 2002, the director of finance is authorized to transfer from the housing finance revolving fund to the general fund the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 34. The legislature determines that there is in the housing for elders revolving fund at least \$250,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the housing for elders revolving fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 35. The legislature determines that there is in the petroleum products control fund at least \$115,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the petroleum products control fund to the general fund the sum of \$115,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 36. The legislature determines that there is in the rental assistance revolving fund at least \$6,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the rental assistance revolving fund to the general fund the sum of \$6,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 37. The legislature determines that there is in the state disaster revolving loan fund at least \$250,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the state disaster revolving loan fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 38. The legislature determines that there is in the natural energy laboratory of Hawaii authority special fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the natural energy laboratory of Hawaii authority special fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 39. The legislature determines that there is in the compliance resolution fund at least \$33,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the compliance resolution fund to the general fund the sum of ~~\$33,000,000~~ \$26,000,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 40. The legislature determines that there is in the insurance regulation fund at least \$4,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the insurance regulation fund to the general fund the sum of ~~\$2,000,000~~ \$0<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003. On December 1, 2002, the director of finance is authorized to transfer from the insurance regulation fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 41. The legislature determines that there is in the use of school facilities for recreational and community purposes fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the use of school facilities for recreational and community purposes

fund to the general fund the sum of ~~\$1,000,000~~ \$0<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 42. The legislature determines that there is in the human resource development special fund at least \$150,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the human resource development special fund to the general fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 43. The legislature determines that there is in the environmental response revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the environmental response revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 44. The legislature determines that there is in the Hawaii tobacco settlement special fund at least \$1,200,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Hawaii tobacco settlement special fund to the general fund the sum of \$1,200,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 45. The legislature determines that there is in the driver education and training fund at least \$700,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the driver education and training fund to the general fund the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 46. The legislature determines that there is in the judiciary computer system special fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the judiciary computer system special fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 47. The legislature determines that there is in the judiciary spouse and child abuse special fund at least \$150,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the judiciary spouse and child abuse special fund to the general fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 48. The legislature determines that there is in the boiler and elevator safety revolving fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the boiler and elevator safety revolving fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 49. The legislature determines that there is in the occupational safety and health training and assistance fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the occupational safety and health training and assistance fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 50. The legislature determines that there is in the state parks special fund at least \$250,000 in excess of the requirements of the fund. On July 1,

2002, the director of finance is authorized to transfer from the state parks special fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 51. The legislature determines that there is in the natural area reserve fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the natural area reserve fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 52. The legislature determines that there is in the beach restoration special fund at least \$50,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the beach restoration special fund to the general fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 53. The legislature determines that there is in the bureau of conveyances special fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the bureau of conveyances special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 54. The legislature determines that there is in the commercial fisheries special fund at least \$100,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the commercial fisheries special fund to the general fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 55. The legislature determines that there is in the special land and development fund at least \$9,150,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of ~~\$9,150,000~~ \$7,150,000<sup>2</sup> or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 56. The legislature determines that there is in the controlled substance registration revolving fund at least \$100,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the controlled substance registration revolving fund to the general fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 57. The legislature determines that there is in the Halawa correctional facility inmate store fund at least \$100,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Halawa correctional facility inmate store fund to the general fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 58. The legislature determines that there is in the Oahu community correctional center inmate store fund at least \$250,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Oahu community correctional center inmate store fund to the general fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 59. The legislature determines that there is in the Waiawa correctional facility inmate store fund at least \$60,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the Waiawa correctional facility inmate store fund to the general fund the sum of \$60,000 or so much thereof as may be necessary for fiscal year 2002-2003.

SECTION 60. The legislature determines that there is in the state highway fund at least \$22,000,000 in excess of the requirements of the fund. On July 1, 2002, the director of finance is authorized to transfer from the state highway fund to the general fund the sum of \$22,000,000 or so much thereof as may be necessary for fiscal year 2002-2003.

#### **PART IV**

SECTION 61. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>3</sup>

SECTION 62. This Act shall take effect on June 30, 2002.

(Approved June 25, 2002.)

#### **Notes**

1. No strike through.
2. Item vetoed, replaced, and initialed "BJC".
3. Edited pursuant to HRS §23G-16.5.

### **ACT 179**

S.B. NO. 706

A Bill for an Act Relating to State Government.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Though our nation moves on from the terrorist attacks of September 11, 2001, the impact of that day continues to affect Hawaii's economy. The unprecedented grounding of all air travel in the United States in the days immediately after the attack and the subsequent drop in visitor arrivals effectively destroyed the momentum of Hawaii's economy. As business in hotels and restaurants plummeted in those first weeks, companies were forced to let workers go or severely reduce the number of hours worked. Many people found themselves unable to support themselves and their families. The state unemployment office was flooded with workers who lost their jobs. Providers of services to the hungry and homeless suddenly found themselves overwhelmed by requests for help. As Hawaii mourned with the rest of the nation for those lost in the attacks, we also experienced the pain of need in our own community as the damage rippled outward from the tourism industry to impact other sectors of our economy.

Faced with a \$300,000,000 shortfall, the legislature finds itself in the difficult position of having to balance the budget while trying to preserve the most essential services, including those for the most vulnerable and needy of Hawaii's people. These unprecedented circumstances leave us no choice but to take unusual and, perhaps, painful steps to address the current budget shortfall and prevent further losses in education, public health, social programs, public safety, environmental protection, and investments in infrastructure for the State.

The legislature finds that it is necessary to make the best possible use of all available resources, including using funds from the inactive hurricane reserve trust

fund. This fund was originally created to provide hurricane insurance coverage to Hawaii homeowners during a period when private insurance was unavailable or prohibitively expensive. Now that private insurance is readily available at reasonable prices, the fund is no longer issuing policies and the balance of the fund is unused. It is the intent of the legislature to use a portion of the moneys in the fund to prevent damage from future hurricanes, by giving matching grants to Hawaii homeowners to make their homes less vulnerable to hurricane-strength winds, and to use a portion of the fund to address other pressing and immediate needs in the state. Improving the resistance of Hawaii residences to future hurricanes will greatly decrease the potential for damage, making the kinds of losses suffered by the insurance industry in 1991 less likely. To further ensure that Hawaii is protected from future hurricanes, the legislature finds it prudent to authorize the issuance of general obligation bonds to recapitalize the relief fund and provide a back-up insurance provider for Hawaii home owners.

SECTION 2. The legislature finds that Hawaii is susceptible to property loss due to hurricanes, tropical storms, and strong winds. The best long-term solution to reducing the potential damage is the statewide use of wind resistive devices. The legislature desires to establish a three-year pilot program, not subject to chapter 42F, 91, or 103D, Hawaii Revised Statutes, to provide grants to certain property owners for installation of wind resistive devices, approved by the insurance commissioner, that lessen the severity of property loss from strong winds.

The legislature finds that the grant program serves a public purpose by protecting the health, safety, and welfare of the residents of this State. The installation of wind resistive devices will help to reduce the incidence and severity of personal injury and property damage in the event of a hurricane, thereby preserving human life and property values and minimizing disruptions to the State's economy, business activity, and the delivery of public services. The grant program also serves the public purpose of stimulating economic growth and activity in the State by creating business and employment opportunities through the sale and installation of wind resistive devices.

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

#### **“ARTICLE LOSS MITIGATION GRANT PROGRAM**

**§431: -101 Definitions.** As used in this article:

“Commissioner” means the insurance commissioner.

“Loss mitigation” means actions undertaken to reduce losses that may result from a hazard.

“Wind resistive devices” means devices and techniques, as identified and determined in accordance with section 431: -104(b), that increase a building's or structure's resistance to damage from wind forces.

**§431: -102 Loss mitigation grant fund.** (a) There is established a special fund to be designated as the loss mitigation grant fund. Moneys transferred to the loss mitigation grant fund may be expended by the commissioner to carry out the commissioner's duties and obligations under this article. Disbursements from the loss mitigation grant fund shall not be subject to chapter 42F, 91, or 103D.

(b) The loss mitigation grant fund may be used by the commissioner to make loss mitigation grants authorized under this article. The loss mitigation grant fund shall also be used by the commissioner to pay for any administrative and operational



costs, including personnel costs and marketing costs, associated with a loss mitigation grant program. Any law to the contrary notwithstanding, the commissioner may use the moneys in the loss mitigation grant fund to employ or retain, by contract or otherwise, without regard to chapters 76 and 78, necessary professional, expert, managerial, technical, and support personnel to implement and carry out the purposes of this article.

(c) The commissioner shall prepare an annual report to the director, governor, and the legislature on the use of the loss mitigation grant fund. The report shall provide statistical information on program participation. The report shall be submitted to the legislature no later than twenty days prior to the convening of each regular legislative session.

**§431: -103 Establishment of loss mitigation grant program.** The commissioner shall develop and implement a pilot grant program to encourage the installation of wind resistive devices. The commissioner may spend up to \$6,000,000 from the loss mitigation grant fund over three years for the grant program, which amounts shall include the costs of administering, operating, and marketing the grant program.

For the first year of the grant program, the commissioner may make grants only to former policyholders of the Hawaii hurricane relief fund. From the second year onward, the commissioner may also make grants to all single or multi-family residential owners, which may include owners of townhouse units or condominium apartments under section 431: -104(c)(3).

**§431: -104 Standards for the award of grants.** (a) Subject to the availability of funds and the standards in this article, grants for wind resistive devices shall be awarded by the commissioner:

- (1) That reimburse fifty per cent of costs incurred for the wind resistive devices and their installation and inspection, up to a maximum total reimbursement of \$2,100 per dwelling;
  - (2) On a first-come first-served basis, as determined by the commissioner; and
  - (3) For a wind resistive device or devices installed only in a single or multi-family residential dwelling.
- (b) Grants shall be awarded for the installation of the following:
- (1) Uplift restraint ties at roof ridges and roof framing members to wall or beam supports;
  - (2) Additional fastening of roof sheathing and roof decking for high wind uplift;
  - (3) Impact and pressure resistant exterior opening protective devices; and
  - (4) Wall to foundation uplift restraint connections strengthening for wood foundation posts on footings.

The description, specifications, guidelines, and requirements for these wind resistive devices shall be further developed and determined by the commissioner in the commissioner's sole discretion. The commissioner, in the commissioner's sole discretion, may amend, narrow, or expand the definitions, description, specifications, and requirements of the wind resistive devices.

- (c) In addition, a grant may be made to an applicant only if the applicant:
- (1) Has met the descriptions, specifications, guidelines, and requirements established by the commissioner for the grant program;
  - (2) Has filed a completed application form, as determined solely by the commissioner, together with all supporting documentation required by the commissioner;

- (3) Has, in the case of a building with multiple dwellings, filed together completed grant applications for all dwellings in the building; for installation of wind resistive devices indicated in section 431: - 104(b)(1), (2), and (4); provided that this requirement does not apply section 431: -104(b)(3);
  - (4) Has installed a wind resistive device or devices that have been designated and approved by the commissioner;
  - (5) Has fully paid, prior to applying for the grant, the cost of the wind resistive device or devices, as well as the installation and inspection costs for which the grant is sought. The grant shall be used to reimburse only these costs or a portion thereof;
  - (6) Has hired an inspector, determined by the commissioner to be qualified in accordance with the requirements of the commissioner, who has verified in writing that the installation of the wind resistive device or devices is complete and is in compliance with the grant program specifications, guidelines, and requirements, as determined by the commissioner;
  - (7) Has installed the wind resistive device or devices after July 1, 2002;
  - (8) Has provided any other information deemed necessary by the commissioner; and
  - (9) Has met all additional requirements needed to implement the grant program as determined by the commissioner.
- (d) Moneys appropriated for the grant program may be used to pay for the costs of administering, operating, and marketing the grant program, as determined by the commissioner.

**§431: -105 Technical advisory committee.** The commissioner shall appoint an advisory committee of persons having expertise and familiarity relevant to the mitigation grant program and feasibility study report.”

SECTION 4. Chapter 431P, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§431P- Transfer of funds; immunity.** There shall be no cause of action, claim for damages or relief, charge, or any other liability of any kind whatsoever created against the State, the Hawaii hurricane relief fund, the commissioner, or their respective agents, employees, or board, by, or relating to, the transfer of any moneys from the hurricane reserve trust fund to the loss mitigation grant fund or from the loss mitigation grant fund to the hurricane reserve trust fund or involving the loss mitigation grant program.”

SECTION 5. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) [Solely] Moneys in the hurricane reserve trust fund may be:

- (1) Disbursed upon dissolution of the Hawaii hurricane relief fund[,-the]; provided that:

- (A) The net moneys in the hurricane reserve trust fund shall revert to the state general fund[-] after [any] payments by the fund on behalf of licensed property and casualty insurers or the State that are required to be made pursuant to any federal disaster insurance program enacted to provide insurance or reinsurance for hurricane risks[-.In the event] are completed; and

- (B) If such moneys are paid on behalf of licensed property and casualty insurers, payment shall be made in proportion to the

premiums from policies of hurricane property insurance serviced by the insurers in the twelve months prior to dissolution of the fund[.]; or

(2) Deposited to the loss mitigation grant fund established under section 431: 102;

provided that all interest earned from the principal in the hurricane reserve trust fund shall be transferred and deposited into the general fund each year that the hurricane reserve trust fund remains in existence."

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 \$0<sup>1</sup>, or so much thereof as may be necessary for fiscal year 2002-2003, to be deposited into the loss mitigation grant fund.

There is appropriated out of the loss mitigation grant fund the sum of \$2,000,000 \$0<sup>1</sup>, or so much thereof as may be necessary for fiscal year 2002-2003, to develop and implement the grant program established under this Act. The sum appropriated shall be expended by the insurance commissioner for the purposes of this Act.

SECTION 7. Notwithstanding any other law to the contrary, there is appropriated out of the hurricane reserve trust fund the sum of \$29,000,000, or so much thereof as may be necessary for fiscal year 2002-2003, to be deposited into the general fund.

The sum appropriated shall be expended by the Hawaii hurricane relief fund.

SECTION 8. There shall be no cause of action, claim for damages or relief, charge, or any other liability of any kind whatsoever created against the state, the Hawaii hurricane relief fund, the Hawaii hurricane relief fund's board and its members, or their respective agents, or employees, by or relating to the transfer of any moneys from the hurricane reserve trust fund to the general fund.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 10. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

#### Notes

1. Item vetoed, replaced, and initialed "BJC".

2. Edited pursuant to HRS §23G-16.5.

## ACT 180

S.B. NO. 2242

A Bill for an Act Relating to Public Land Leases.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended to read as follows:

**"§171-36 Lease restrictions; generally.** (a) Except as otherwise provided by law, the following restrictions shall apply to all leases:

(1) Options for renewal of terms are prohibited;

- (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;
  - (3) No lease shall be made for any land under a lease which has more than two years to run;
  - (4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county;
  - (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;
  - (6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;
  - (7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise; and
  - (8) Mineral and metallic rights and surface and ground water shall be reserved to the State.
- (b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:
- (1) Modify or eliminate any of the restrictions specified in subsection (a);
  - (2) Extend or modify the fixed rental period of the lease; or
  - (3) Extend the term of the lease
- to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with ~~[the Federal Housing Administration, Federal National Mortgage Association, Department of Veterans Affairs, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or any other]~~ any federal mortgage lending agency ~~[qualified to do business in the State,~~

and their respective successors and assignees, or], to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates[; provided that the private lender shall be qualified to do business in the State;], or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the board or an independent appraiser; provided [further] that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening; [and]
- (4) Any federal or private lending institution shall be qualified to do business in the State;
- (5) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
- (6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled; and
- [ (4) ] (7) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.

(c) The board at any time during the term of any intensive agricultural, aquaculture, or mariculture lease and when justified by sound economic practices or other circumstances, may permit an alternative agricultural, aquaculture, or mariculture use or uses for any portion or portions of the land demised. As a condition to permitting alternative uses, the board may require such other modifications, including rental adjustments or changes in the lease as may be necessary to effect or accommodate the alternative use or uses. An alternative use or uses may be allowed by the board upon:

- (1) The application of the lessee;
- (2) Consent of each holder of record having a security interest in the leasehold; and
- (3) A finding by the board that the alternative use or uses are in the public interest.

(d) The board, from time to time, during the term of any agriculture, intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may modify or eliminate any of the restriction specified in subsection (a), extend or modify the fixed rental period of the lease, or extend the term of the lease upon a showing of significant economic hardship directly caused by:

- (1) State disaster, pursuant to chapter 209, including seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or severe drought; or
- (2) A taking of a portion of the area of the lease by government action by eminent domain, withdrawal, or conservation easement; provided that the portion taken shall not be less than ten per cent of the entire leased area unless otherwise approved by the board; and provided that the board determines that the lessee will not be adequately compensated pursuant to the lease provisions.

(e) The approval of any extension granted pursuant to subsection (d) shall be subject to the following:

- (1) The demised premises has been used substantially for the purposes for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) The rental shall not be less than the rental for the preceding term;
- (4) The rules of the board, setting forth any additional terms and conditions which shall ensure and promote the purposes of the demised lands; and
- (5) The length of the extension shall not exceed a reasonable length of time for the purpose of providing relief and shall in no case exceed five years.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

## ACT 181

S.B. NO. 2331

A Bill for an Act Making an Appropriation for the Fiftieth Anniversary Commemoration of the Korean War Commission.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1999, the governor, through Executive Order No. 99-07, honored the men and women who served in Korea for their struggles and sacrifices under trying circumstances in the service of their country and for the cause of freedom by establishing the fiftieth anniversary commemoration of the Korean War commission. In 2000, the legislature passed Act 232, Session Laws of Hawaii 2000, appropriating \$70,000 to enable the commission to carry out its mission.

Executive Order No. 99-07 also provided that the fiftieth commemoration of the Korean War commission shall be terminated no later than the last day of the regular session of 2001 of the twenty-first legislature of the State of Hawaii, unless extended by concurrent resolution of the legislature. As no such concurrent resolution was ever passed, the commission technically does not exist. The legislature finds, however, that the commission has not yet completed its work.

The purpose of this Act is to appropriate funds to the fiftieth anniversary commemoration of the Korean War commission to conduct an anniversary finale commemorating the fiftieth anniversary of the end of the Korean War and to formally reestablish the commission.

SECTION 2. The fiftieth anniversary commemoration of the Korean War commission is hereby reestablished in the same manner and for the same purpose as provided in Executive Order No. 99-07. The commission shall terminate upon the conclusion of its work, or December 31, 2003, whichever occurs first.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$20,000 or so much thereof as may be necessary for fiscal year 2002-2003 to carry out the functions of the fiftieth anniversary commemoration of the Korean War commission.

The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

ACT 182

S.B. NO. 2477

A Bill for an Act Relating to the Office of Hawaiian Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§10- Grants; conditions and qualifications.** (a) Applications for grants shall be made to the office and contain such information as the office shall require. At a minimum, the applicant shall show:

- (1) The name of the requesting organization or individual;
  - (2) The purpose for the grant;
  - (3) The service to be supported by the grant;
  - (4) The target group to be benefited;
  - (5) The cost of the grant; and
  - (6) That the grant shall be used for activities that are consistent with the purposes of this chapter.
- (b) Grants shall only be awarded if:
- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
  - (2) The applicant agrees to comply with applicable federal, state, and county laws;
  - (3) The grant shall not be used for purposes of entertainment or perquisites;
  - (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
  - (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.
- (c) To receive a grant, an applicant shall:
- (1) Be:
    - (A) A for-profit subsidiary of a nonprofit organization incorporated under the law of the State;
    - (B) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service;
    - (C) A cooperative association; or
    - (D) An individual, who in the board's determination, is able to provide the services or activities proposed in the application for a grant;
  - (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies that describe the manner in which

- business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree of consanguinity unless specifically permitted by the office;
- (3) Agree to make available to the office all records the applicant may have relating to the operation of the applicant's activity, business, or enterprise, to allow the office to monitor the applicant's compliance with the purpose of this chapter; and
  - (4) Establish, to the satisfaction of the office, that sufficient funds are available for the effective operation of the activity, business, or enterprise for the purpose for which the grant is awarded.
- (d) Every grant shall be:
- (1) Monitored by the office to ensure compliance with this chapter and the purposes and intent of the grant; and
  - (2) Evaluated annually to determine whether the grant attained the intended results in the manner contemplated."

SECTION 2. Section 10-2, Hawaii Revised Statutes, is amended to read as follows:

**"§10-2 Definitions.** In this chapter, if not inconsistent with the context:

"Administrator" means the administrator of the office of Hawaiian affairs[;].

"Beneficiary of the public trust entrusted upon the office" means native Hawaiians and Hawaiians[;].

"Board" means the board of trustees[;].

"Grant" means an award of funds by the office to a specified recipient to support the activities of the recipient for activities that are consistent with the purposes of this chapter.

"Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii[;].

"Native Hawaiian" means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii[;].

"Office" means the office of Hawaiian affairs.

"Recipient" means any organization or person receiving a grant."

SECTION 3. Section 10-5, Hawaii Revised Statutes, is amended to read as follows:

**"§10-5 Board of trustees; powers and duties.** The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3[~~of this chapter~~];
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private



sources, and transferred to the office for native Hawaiians and Hawaiians;

- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to individuals, and public or private [agencies for pilot projects, demonstrations, or both, where such projects or demonstrations fulfill criteria established by the board;] organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10- ;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated."

SECTION 4. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
  - (A) For grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
  - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
  - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
  - (D) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;
  - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
  - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;

- (G) To governmental bodies of the State;
  - (H) As loans, under loan programs administered by a governmental body; [and]
  - (I) For contracts awarded in accordance with the provisions of chapter 103F; and
  - (J) For grants awarded by the Office of Hawaiian Affairs in accordance with the provisions of chapter 10.
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
- (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
  - (B) Works of art for museum or public display;
  - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
  - (D) Meats and foodstuffs for the Kalaupapa settlement;
  - (E) Opponents for athletic contests;
  - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
  - (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
  - (H) Goods and services for commercial resale by the State;
  - (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
  - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State;
  - (K) Financing agreements under chapter 37D; and
  - (L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
- (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
- (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
  - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms.”

SECTION 5. Section 103F-101, Hawaii Revised Statutes, is amended by amending subsection (a)<sup>1</sup> to read as follows:

“(a) This chapter shall apply to all contracts made by state agencies to provide health or human services to Hawaii’s residents, provided that this chapter shall not apply to:

- (1) Contracts to award grants or subsidies of state funds appropriated by the legislature to a specific organization or individual;
- (2) Transactions between or among government agencies, including but not limited to agreements, contracts, and grants;
- (3) Transactions expressly exempt from the requirements of this chapter; [and]
- (4) Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board[-]; and
- (5) Contracts to award grants of Office of Hawaiian Affairs funds pursuant to section 10-.”

(b) This chapter shall only apply to contracts solicited or entered into after July 1, 1998, unless the parties agree to its application to a contract solicited or entered into prior to that date.

(c) Nothing in this chapter or rules adopted hereunder shall prevent any state agency from complying with the terms or conditions of any grant, bequest, or cooperative agreement, or from satisfying any requirement of federal statute or regulation to avoid the loss or reduction of federal assistance.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 183

S.B. NO. 2478

A Bill for an Act Relating to the Trustees of the Office of Hawaiian Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to allow the trustees of the office of Hawaiian affairs to participate in and receive the same benefits from the retirement benefits programs in which other elected salaried officials of the State participate.

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§88- Service while a member of the board of trustees of the office of Hawaiian affairs.** Notwithstanding any provisions of section 10-9 that may previously have precluded a member of the board of trustees of the office of Hawaiian affairs from participating as a member of the employees’ retirement system:

- (1) Any trustee of the office of Hawaiian affairs in service on July 1, 2002, may become a member upon the trustee’s election in accordance with section 88-43 by October 1, 2002;

- (2) Any trustee of the office of Hawaiian affairs elected or appointed after July 1, 2002, may become a member upon the trustee's election in accordance with section 88-43;
- (3) Any service as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through July 1, 2002, if claimed by the member, shall be credited in the member's class at the time the service is acquired; provided that membership service shall be credited in accordance with sections 88-59 and 88-272; and
- (4) Any former trustee of the office of Hawaiian affairs who retired from service prior to July 1, 2002, shall not be entitled to claim membership service as a trustee during the period July 1, 1993, through June 30, 2002."

SECTION 3. Section 10-9, Hawaii Revised Statutes, is amended to read as follows:

**"§10-9 Salaries; benefit; expenses.** Members of the board:

- (1) Shall receive an annual salary which shall be paid:
  - (A) Exclusively from revenue under section 10-13.5; and
  - (B) In equal amounts, beginning with the first pay period for state employees in November of the year the member of the board is elected.

Effective July 1, 1993, and until the salary commission makes recommendations for salary, the salary of the chairperson of the board shall be \$37,000 a year and the salary of other members of the board shall be \$32,000 a year. Any provision of law to the contrary notwithstanding, all members of the board shall be included in any benefit program generally applicable to officers and employees of the State [~~except for benefit programs relating to retirements~~];

- (2) Shall be allowed transportation fares between islands and abroad;
- (3) Shall be allowed personal expenses at the rates specified by section 78-15, while attending board meetings or while on official business as authorized by the chairperson, when those board meetings or official business shall require a member to leave the island upon which the member resides; and
- (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member's duties and responsibilities."

SECTION 4. Section 87-5, Hawaii Revised Statutes, is amended to read as follows:

**"§87-5 Reimbursement for state contributions.** (a) All state and county agencies having control of special funds shall reimburse the State for contributions made by the State pursuant to section 87-4 on account of the employees in the agencies whose compensation is paid in whole or part from the special funds. All state and county agencies receiving federal funds, which may be expended for the purpose of absorbing the contributions payable by the State to the fund, shall set aside a portion of the federal funds sufficient to reimburse the State for contributions made by the State pursuant to section 87-4 on account of the employees in the agencies whose compensation is paid in whole or part from federal funds.

(b) The office of Hawaiian affairs shall reimburse the State for contributions made by the State pursuant to section 87-4.5, 87-4.6, or 87-6 on account of a former member of the board of trustees of the office of Hawaiian affairs who is a retired member of the employees' retirement system."

SECTION 5. Section 88-21, Hawaii Revised Statutes, is amended by amending the definitions of “elective officer” or “elected official” and “employee” to read as follows:

““Elective officer” or “elective official”: any person elected to a public office or appointed to fill a vacancy of an elective office, except as a delegate to a constitutional convention[;] or member of the board of education [~~or trustee of the office of Hawaiian affairs~~], in accordance with an election duly held in the State or counties under chapter 11; provided that the person receives compensation, pay, or salary for such office.

“Employee”: any employee or officer of the State or any county, including inspectors, principals, teachers and special teachers, regularly employed in the public schools, cafeteria managers and cafeteria workers, apprentices and on-the-job trainees whether or not supported in whole or in part by any federal grants, members of the legislature and other elective officers, including the trustees of the office of Hawaiian affairs, legislative employees who are employed on a full-time basis during and between sessions, probationary and provisional employees, any employee of the educational nonprofit public corporation as provided in section 88-49.7, per diem employees and others who are made eligible by reason of their employment to membership in the system by or pursuant to any other provision of law, but excluding:

- (1) Per diem employees who elect to withdraw or not to become members as provided in section 88-42;
- (2) Members of the legislature who do not elect to be members as provided in section 88-42;
- (3) Persons excluded by rules of the board pursuant to section 88-43.

An individual is an employee during the period of a leave of absence if the individual is in service, as defined in this part, during the period of the leave of absence and the board shall determine who are employees within the meaning of this part.”

SECTION 6. Section 88-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be three classes of members in the system to be known as class A, class B, and class C, defined as follows:

- (1) Class A shall consist of members covered by section 88-74(3)[;] and (4), those members whose salaries are set forth in sections 26-52 and 26-53, and their county counterparts, managing directors or administrative assistant to the mayor, and other department heads, including agency heads appointed by the mayor, first deputies appointed by the county attorney and prosecuting attorney, the county clerk and deputy county clerk of each county, the administrative director of the courts, the deputy administrative director of the courts, the executive director of the labor and industrial relations appeals board, the executive director of the Hawaii labor relations board, investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, public safety investigations staff investigators, and those members in service prior to July 1, 1984, including those who are on approved leave of absence, who are covered by Title II of the Social Security Act on account of service creditable under this part. This class shall consist of:
  - (A) All employees who enter membership after June 30, 1957, except employees in positions to which coverage under Title II of the Social Security Act is not extended;

- (B) All employees who were members on July 1, 1957, who elected to be covered by the Social Security Act; and
- (C) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership;
- (2) Class B shall consist of all members who are not class A or class C members; and
- (3) Except for members described in ~~[section 88-47(a)]~~ paragraph (1), class C shall consist of all employees in positions covered by Title II of the Social Security Act who:
  - (A) First enter service after June 30, 1984;
  - (B) Reenter service after June 30, 1984, without vested benefit status as provided in section 88-96(b);
  - (C) Make the election to become a class C member as provided in part VII; or
  - (D) Are former class C retirants who return to service requiring the retirant's active membership."

SECTION 7. Section 88-51, Hawaii Revised Statutes, is amended to read as follows:

**"§88-51 Membership service generally.** Membership service includes:

- (1) Service by an employee rendered since becoming a member;
- (2) Service rendered prior to becoming a member but (A) subsequent to January 1, 1926, by an employee of the State or (B) subsequent to January 1, 1928, by an employee of any county;
- (3) Service as an employee of the federal government where the function carried on by the government has been transferred to the State or any county, or where the employee has been transferred to the federal government and subsequently retransferred to the State or any county;
- (4) Service rendered by an employee in the office of the delegate to Congress from Hawaii, or service rendered by an employee in the office of a representative or a senator to Congress from the State; provided that (A) the employee was a member of the system immediately preceding the time the employee renders such service; (B) the employee reenters the service of the State or county within one year after termination of such service; and (C) the employee has, to the satisfaction of the board of trustees, waived the employee's right to any credit under the Civil Service Retirement Act (5 U.S.C.A. 2251) based upon such service; provided further that credit for such service shall not exceed eight years;
- (5) Service as an employee of the Hawaii territorial guard;
- (6) Service while engaged in professional improvement pursuant to an approved leave of absence for such purpose, with or without pay;
- (7) Service between the years 1941 and 1947 with federal defense agencies, where the employee was employed by the government before the wartime service, went into defense work at the direction of the employee's employer, and returned to government service at the end of the wartime service; provided that these circumstances shall be verified by evidence satisfactory to the board of trustees;
- (8) Service, not exceeding four years, in the military service of the United States during the period 1941-1949 rendered by an employee who was employed by the Territory or county prior to the employee's induction into the military and who subsequently returned to employment of the Territory or county following the employee's discharge;

- (9) Service rendered prior to becoming a member as a full-time employee at the Leahi Hospital or Pahala Hospital, now known as Ka'u General Hospital, Puunene Hospital, Waimea Hospital, Waimea, Kauai, Haliimaile Dispensary, and Paia Hospital and Pioneer Mill Hospital;
- (10) Service rendered prior to becoming a member as a full-time sheriff or deputy sheriff in the office of the sheriff;
- (11) The period of time when a member was absent from work because of injuries incurred within the scope of the member's employment and who has received workers' compensation benefits prior to July 1, 1967;
- (12) Service rendered as an employee of the legislature during any legislative session;
- (13) Service as a school cafeteria manager or worker if paid by the State regardless of the source of funds from which paid; provided that twelve months' service shall be credited for the time such a person was working on a nine-month schedule during a school year[-]; and
- (14) Service rendered as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through June 30, 2002.

Membership service shall only be credited for any period for which the member makes the required contributions to the system."

SECTION 8. Section 88-125, Hawaii Revised Statutes, is amended to read as follows:

**"§88-125 Contributions by certain state agencies.** (a) Each of the departments and agencies hereinafter described and the office of Hawaiian affairs shall reimburse the State for the respective amounts payable by the State to cover the liability of the State to the various funds of the system on account of the employees in such departments and agencies[.] and the trustees of the office of Hawaiian affairs. This provision shall apply to any department or agency of the State which is authorized by law to fix, regulate and collect rents, rates, fees or charges of any nature. The provisions herein shall not apply as to rental units receiving federal subsidies until approval has been obtained from the appropriate federal agency.

(b) Whenever any department or agency of the State receives federal-aid funds which may be expended for the purpose of covering the liability of the State to the various funds of the system, the department or agency shall set aside a portion of these funds sufficient to cover the amount of the State's liability to the various funds of the system on account of the employees in the department or agency whose compensation is paid in whole or part from federal funds.

(c) The amount payable by each department or agency of the State, or the office of Hawaiian affairs, covered by this section shall be determined at least quarterly by the department of budget and finance on the basis of the payroll of the employees of the department or agency, or trustees of the office of Hawaiian affairs, who are members of the system in the same manner the allocation of employer contributions is determined in section 88-123. The comptroller of the State, the office of Hawaiian affairs, or any department or agency having control of its own funds shall, upon information furnished by the department of budget and finance, issue a warrant for the proper amount to the system, charging the same to the appropriate fund. The system shall place all such sums to the credit of the State as part payment of the State's contributions to the various funds of the system."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 184**

S.B. NO. 2702

A Bill for an Act Relating to the Kalaeloa Community Development District.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Barbers Point Naval Air Station was officially closed on July 1, 1999, and the Navy is in the process of conveying two thousand one hundred fifty acres of this property, which has been named the “Kalaeloa community development district”, to various agencies of the State and of the city and county of Honolulu. Development of this district is currently the responsibility of the Barbers Point Naval Air Station redevelopment commission.

The Barbers Point lands present unique opportunities for economic development and job creation for the area. The purpose of this Act is to transfer the responsibility for redeveloping this property from the Barbers Point Naval Air Station redevelopment commission to the Hawaii community development authority to enhance the prospects for success by:

- (1) Designating the Hawaii community development authority as the local redevelopment authority for the Barbers Point Naval Air Station surplus lands that are being conveyed to the State and the city and county of Honolulu under the base realignment and closure process;
- (2) Authorizing and empowering the Hawaii community development authority to redevelop the Barbers Point lands in accordance with the reuse plan for the Barbers Point Naval Air Station approved by the governor; and
- (3) Providing economic development incentives to improve the Hawaii community development authority’s prospects of attracting private sector investment in the Kalaeloa community development district.

SECTION 2. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . KALAELOA COMMUNITY DEVELOPMENT DISTRICT**

**§206E-A Barbers Point Naval Air Station redevelopment; power to redevelop established.** (a) The Hawaii community development authority shall be the designated agency of the State to implement this part.

(b) The authority shall act as the local redevelopment authority to facilitate the redevelopment of Barbers Point Naval Air Station in accordance with the Barbers Point Naval Air Station community reuse plan. In addition to any other duties that the authority may have pursuant to this chapter, the authority’s duties shall include but not be limited to:

- (1) Coordinating with the Navy and other entities during the conveyance of properties and conducting remediation activities for the Barbers Point Naval Air Station community reuse plan;
- (2) Assisting landholders designated by the plan to market their properties and process conveyance requests;



- (3) Working with the Navy and others to ensure that infrastructure support is provided to the existing developed area, referred to as the “down-town area”, and other federally retained areas;
- (4) Developing the infrastructure necessary to support the implementation of the Barbers Point Naval Air Station community reuse plan; and
- (5) Providing, to the extent feasible, maximum opportunity for the reuse of surplus property by private enterprise or state and county government.

(c) Five additional voting members shall, except as otherwise provided in this subsection, be appointed to the authority by the governor to represent the Kalaeloa community development district. These members shall be considered in determining quorum and majority only on issues relating to the Kalaeloa community development district, and may vote only on issues relating to the Kalaeloa community development district. These members shall consist of:

- (1) The chairperson of the Hawaiian homes commission;
- (2) The director of the city and county of Honolulu department of planning and permitting;
- (3) Two members representing the surrounding community for a term pursuant to section 26-34, one of which shall be selected by the mayor of the city and county of Honolulu; and
- (4) One member who is a Hawaiian cultural specialist.

**§206E-B Designation of the Kalaeloa community development district.**

(a) The federal Department of Defense declared approximately two thousand one hundred fifty acres of land at the Barbers Point Naval Air Station to be surplus to its needs and under a base realignment is conveying these surplus lands to the various end users identified by the community reuse plan. The governor has approved and forwarded to the Navy the community reuse plan for these surplus lands.

(b) The legislature hereby designates these surplus lands as the “Kalaeloa community development district”.

**§206E-C District established; boundaries.** The Kalaeloa community development district is established. The district shall include that area within the boundaries described as follows: the eastern boundary begins at Geiger Gate and runs along East Hansen Road to the intersection with Essex Road until its termination at White Plains Beach Park, where it follows the eastern boundary of parcel 9-1-13:74 to the shoreline at the mean high water mark; the northern boundary begins at the eastern corner at the Geiger Road entry gate where it becomes Roosevelt Road and continues westward until its intersection with West Perimeter Road; the western boundary follows the West Perimeter Road until its termination and then follows the western border of parcel 9-1-13:30 to the shoreline at the mean high water mark; two parcels (9-1-13:01 and 9-1-13:09) lying west of West Perimeter Road toward its mauka end, and two parcels (9-1-31:28 and 9-1-31:47) lying west of West Perimeter Road on its makai end, all of which are physically separated from the western boundary by a storm water drainage canal, are also included; the southern boundary follows the shoreline at the mean high water mark from the western boundary of parcel 9-1-13:30 to the eastern boundary of White Plains Beach Park (9-1-13:74). All references to parcel numbers contained herein indicate the areas identified by such tax map key numbers as of March 18, 2002.

**§206E-D Kalaeloa community development district; development guidance policies.** The following development guidance policies shall generally govern the authority’s actions in the Kalaeloa community development district:

- (1) Development shall be in accordance with the community reuse plan, except as it conflicts with the Hawaii State Constitution and the Hawaii

Revised Statutes, as they relate to the department of Hawaiian home lands;

- (2) With the approval of the governor and concurrence of the Navy, and in accordance with state law governing lands owned by the department of Hawaiian home lands, the authority, upon the concurrence of a majority of its voting members, may modify and make changes to the reuse plan to respond to changing conditions; provided that prior to amending the reuse plan the authority shall conduct a public hearing to inform the public of the proposed changes and receive public input;
- (3) Development shall seek to promote economic development and employment opportunities by fostering diverse land uses and encouraging private sector investments that utilize the opportunities presented by the receipt of property from the base closure consistent with the needs of the public;
- (4) The authority may engage in planning, design, and construction activities within and outside of the district; provided that activities outside of the district shall relate to infrastructure development, area-wide drainage improvements, roadways realignments and improvements, business and industrial relocation, and other activities the authority deems necessary to carry out redevelopment of the district and implement this chapter. Studies or coordinating activities may be undertaken by the authority in conjunction with the county and appropriate state agencies and may address facility systems, industrial relocation, and other activities;
- (5) Planning, replanning, rehabilitation, development, redevelopment, and other preparation for reuse of Barbers Point Naval Air Station under this chapter are public uses and purposes for which public money may be spent and private property acquired;
- (6) Hawaiian archaeological, historic, and cultural sites shall be preserved and protected. Endangered species of flora and fauna and significant military facilities shall be preserved to the extent feasible;
- (7) Land use and redevelopment activities within the district shall be coordinated with and to the extent possible complement existing county and state policies, plans, and programs affecting the district; and
- (8) Public facilities within the district shall be planned, located, and developed to support the redevelopment policies established by this chapter for the district, the reuse plan approved by the governor, and rules adopted pursuant to this chapter.

**§206E-E Kalaeloa community development revolving fund.** (a) There is established in the state treasury the Kalaeloa community development revolving fund, into which shall be deposited:

- (1) All revenues, income, and receipts of the authority for the Kalaeloa community development district, notwithstanding any other law to the contrary, including section 206E-16;
- (2) Moneys directed, allocated, or disbursed to the Kalaeloa community development district from government agencies or private individuals or organizations, including grants, gifts, awards, donations, and assessments of landowners for costs to administer and operate the Kalaeloa community development district; and
- (3) Moneys appropriated to the fund by the legislature.

(b) Moneys in the Kalaeloa community development revolving fund shall be used for the purposes of this part.

(c) Investment earnings credited to the assets of the fund shall become part of the assets of the fund.

**§206E-F Assessment for operating costs.** (a) The authority shall have the power to assess all land users, except the federal government, for their fair share of the costs required to administer and operate the Kalaeloa community development district, which may include costs associated with staffing. Assessments shall be based on each landowner's proportionate share of the total acreage of the Kalaeloa Community Development District.

(b) The assessment shall be set by the authority annually, based upon the operating budget for the district, and adjusted for any actual expenditures made in the prior year in excess of the prior approved budget. The assessments shall be paid to the authority in semi-annual payments commencing thirty days after the beginning of the fiscal year.

(c) The authority may charge interest or other fees on assessment amounts not paid on a timely basis, and may withhold services or approval of governmental permits for land users delinquent in payments.

(d) For the purposes of this section, "land user" includes the owner of land; provided that the landowner may assign the responsibility for payment of assessments to the lessee or licensee of the land."

SECTION 3. Section 206E-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The authority shall consist of eleven voting members. The director of finance, the director of business, economic development, and tourism, the comptroller, and the director of transportation, or their respective designated representatives shall serve as ex officio, voting members. Seven members shall be appointed by the governor for staggered terms pursuant to section 26-34; provided that four members shall be appointed at large and, initially, three members, hereinafter referred to as county members, shall be selected from a list of ten prospective appointees recommended by the local governing body of the county in which the initial designated district is situated; and provided further that when vacancies occur in any of the three positions for which the members were selected from a list of county recommendations, the governor shall fill such vacancies on the basis of one from a list of four recommendations, two from a list of seven recommendations, or three from a list of ten recommendations. The list of recommendations shall be made by the local governing body of the county. If an additional district is designated by the legislature ~~[in a county other than the county in which the initial designated district is situated]~~, the total membership of the authority shall be increased as prescribed above by the appointment of three additional members~~[-], except as provided for in section 206E-A.~~ Notwithstanding section 92-15, a majority of all members shall constitute a quorum to do business, and the concurrence of a majority of all members shall be necessary to make any action of the authority valid; except that, on any matter relating solely to a specific community development district, the ~~[county]~~ members representing districts other than that specific community development district shall ~~[not vote,]~~ neither vote, nor shall they be counted to constitute a quorum, and concurrence shall be required of a majority of that portion of the authority made up of all ex officio voting members, members at large, and county and district members representing the district for which action is being proposed in order for such action to be valid. All members shall continue in office until their respective successors have been appointed and qualified. Except as herein provided, no member appointed under this subsection shall be an officer or employee of the State or its political subdivisions."

SECTION 4. Section 206E-4, Hawaii Revised Statutes, is amended to read as follows:

**“§206E-4 Powers; generally.** Except as otherwise limited by this chapter, the authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;
- (6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77<sup>1</sup>;
- (7) Prepare or cause to be prepared a community development plan for all designated community development districts;
- (8) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;
- (9) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements;
- (10) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project which the authority has theretofore sold or otherwise conveyed, transferred, or disposed of;
- (11) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property rights or for the furnishing of property or services in connection with a project;
- (12) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on such terms and conditions as it deems advisable;
- (13) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;
- (14) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

- (15) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
- (16) Contract for and accept gifts or grants in any form from any public agency or from any other source;
- (17) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter; and
- (18) Allow satisfaction of any affordable housing requirements imposed by the authority upon any proposed development project through the construction of reserved housing, as defined in section 206E-101, by a person on land located outside the geographic boundaries of the authority's jurisdiction. Such substituted housing shall be located on the same island as the development project and shall be substantially equal in value to the required reserved housing units that were to be developed on site. The authority shall establish the following priority in the development of reserved housing:
  - (A) Within the community development district;
  - (B) Within areas immediately surrounding the community development district;
  - (C) Areas within the central urban core;
  - (D) In outlying areas within the same island as the development project.

The Hawaii community development authority shall adopt rules relating to the approval of reserved housing that are developed outside of a community development district. The rules shall include, but are not limited to, the establishment of guidelines to ensure compliance with the above priorities[; and

- ~~(19) Render technical and administrative services as necessary to assist the Barbers Point Naval Air Station redevelopment commission as the local redevelopment authority in the development of the Kalaeloa community development district].”~~

SECTION 5. Chapter 206G, Hawaii Revised Statutes, is repealed.

SECTION 6. All lands conveyed to the Barbers Point Naval Air Station redevelopment commission by the federal government shall be transferred to the Hawaii community development authority upon the approval of this Act.

SECTION 7. As of June 28, 2002, the director of finance shall transfer the unexpended balance of the Kalaeloa community development revolving fund established pursuant to section 206G-8, Hawaii Revised Statutes, to the Kalaeloa community development revolving fund established pursuant to section 2.

SECTION 8. The powers, functions, and duties of the Barbers Point Naval Air Station redevelopment commission are transferred to the Hawaii community development authority. All references in any contract or other document entered into by the Barbers Point Naval Air Station redevelopment commission shall apply to the Hawaii community development authority as if the latter were specifically named in the law, contract, or other document in place of the Barbers Point Naval Air Station redevelopment commission. The Hawaii community development authority shall assume the duties and carry out any contracts entered into by the Barbers Point Naval Air Station redevelopment commission prior to the effective date of this Act.

SECTION 9. All rules, policies, procedures, guidelines, and other materials adopted by the Barbers Point Naval Air Station redevelopment commission to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the Hawaii community development authority by this Act, shall remain in full force and effect until amended or repealed by the Hawaii community development authority pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the Barbers Point Naval Air Station redevelopment commission in those rules, policies, procedures, guidelines, and other material is amended to refer to the Hawaii community development authority as appropriate.

SECTION 10. There is appropriated out of the Kalaeloa community development revolving fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003 to be used to fund operating costs for the Kalaeloa community development district. Such costs may include costs associated with staffing.

The sum appropriated shall be expended by the Hawaii community development authority for the purposes of this Act.

SECTION 11. It is the intent of this Act to not impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modifications with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 12. In codifying the new part added to chapter 206E, Hawaii Revised Statutes, by section 2 of this Act and referred to in section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2002; provided that section 206E-E, Hawaii Revised Statutes, added by section 2 of this Act, and section 7 of this Act, shall take effect on June 28, 2002.

(Approved June 25, 2002.)

**Note**

1. So in original.

**ACT 185**

S.B. NO. 3047

A Bill for an Act Making an Appropriation for the Waipahu Community Adult Day Health Center and Youth Day Care Center Pilot Project.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the long-term hospitalization of the frail and elderly and their institutionalization in nursing homes have contributed significantly to rising Medicaid costs. Additionally, individuals who are hospitalized and institutionalized suffer from a loss of independence and are at greater risk for developing disease and mental dysfunction than those who are able to remain in their

homes. To address these problems, the State needs to provide the elderly and frail with health care services to prevent the development of serious, debilitating conditions and to facilitate and maximize independent living.

The establishment of an adult day health center would allow the elderly to obtain rehabilitation and wellness services in a noninstitutionalized, community setting. The departments of health and human services have supported the concept of an adult day health care center as a means to lower the costs of long-term care for the frail and elderly population and have indicated their willingness to examine ways of allowing those who are currently eligible or ineligible under the medicaid program to qualify for adult day health services.

The Waipahu community adult day health center and youth day care center begin construction in February, 2002, and is scheduled for completion in the summer of 2002. The centers will offer a variety of rehabilitation and wellness services for adults and youth, and will include facilities for speech and physical therapy, medical examinations, social work services, and other activities. Landscaped grounds and gardens will allow for outdoor activities. Additionally, approximately one-fourth of the facilities will serve as a day care center, offering the opportunity for intergenerational activities that benefit both children and adults.

The purpose of this Act is to appropriate funds for the operation of the Waipahu community adult day health center and youth day care center pilot project.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of ~~\$200,000~~ \$50,000<sup>1</sup> or so much thereof as may be necessary for fiscal year 2002-2003 for the operation of the Waipahu community adult day health center and youth day care center pilot project.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

**Note**

1. Item vetoed, replaced, and initialed "BJC".

**ACT 186**

S.B. NO. 3063

A Bill for an Act Relating to the Environment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the natural physical environment of Hawaii is of significant value to the people of our State, and that a means to support the environment would be worthy of state support.

The legislature further finds that during the past decade, funding to preserve and protect the environment has dropped dramatically, and that a permanent independent source of funding to increase funding would support protection efforts and education programs relating to the environment. The legislature further finds that other states have utilized license plate sales, collectible stamps, and credit cards with great success as a way to raise money to protect the environment.

The purpose of this Act is to reaffirm the State's commitment to the protection of Hawaii's environment by creating long-term supplemental funding sources generated from the voluntary purchase and use of collectible stamps, credit cards, and other programs as may be authorized under this Act.

SECTION 2. Chapter 195, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§195- Products to support the environment.** (a) There is established within the department a program to financially benefit the environment by the development of environmentally-themed products such as collectible stamps, credit cards, and coins to be commercially sold to the public. The department may enter into contracts with private entities for the production of existing and new environmentally-themed products as the department deems appropriate.

(b) Each product developed under this program shall require the approval of the chairperson of the board of land and natural resources and the governor, after consultation with appropriate environmental organizations.

(c) Except for direct costs to administer, produce, and market the products, all revenues from the sale of products under this section shall be paid into the endangered species trust fund established pursuant to section 195D-31 to support programs of the department that:

- (1) Benefit the environment; and
- (2) Are related to the environmental theme of the product sold.

(d) The department shall submit an annual report of the program’s products, costs, and revenues to the legislature no later than twenty days before the convening of each regular session.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 187**

H.B. NO. 741

A Bill for an Act Relating to Civil Liability.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that:

- (1) The framers of our constitutions, recognizing citizen participation in government as an inalienable right essential to the survival of democracy, secured its protection through the right to petition the government for redress of grievances in the First Amendment to the U.S. Constitution and article I, section 4 of the state constitution;
- (2) Communication, testimony, claims, and arguments provided by citizens to their government are essential to wise government decisions and public policy, the public health, safety, and welfare, effective law enforcement, the efficient operation of government programs, the credibility and trust afforded government, and the continuation of America’s republican form of government through representative democracy;
- (3) Civil lawsuits and counterclaims, often claiming millions of dollars, have been and are being filed against thousands of citizens, businesses, and organizations based on their valid exercise of their right to petition, including seeking relief, influencing action, informing, communicat-



- ing, and otherwise participating with government bodies, officials, employees, or the electorate;
- (4) Such lawsuits, called “strategic lawsuits against public participation” or “SLAPPs,” are typically dismissed as unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;
  - (5) The number of SLAPPs has increased significantly over the past thirty years;
  - (6) SLAPPs are an abuse of the judicial process; they are used to censor, chill, intimidate, or punish citizens, businesses, or organizations for involving themselves in public affairs, and controlling SLAPPs will make a major contribution to lawsuit reform;
  - (7) The threat of financial liability, litigation costs, destruction of one’s business, loss of one’s home, and other personal losses from groundless lawsuits seriously affects government, commerce, and individual rights by significantly diminishing public participation in government, in public issues, and in voluntary service;
  - (8) While courts have recognized and discouraged SLAPPs, protection of these important rights has not been uniform or comprehensive; and
  - (9) While some citizen communications to the government inevitably will be incorrect, unsound, self-interested, or not in good faith, it is essential in our democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly, consistently, and comprehensively protected and encouraged.

The purpose of this Act is to:

- (1) Protect and encourage citizen participation in government to the maximum extent permitted by law;
- (2) Create a more equitable balance between the rights of persons to file lawsuits and to trial by jury, and the rights of persons to petition, speak out, associate, and otherwise participate in their governments;
- (3) Support the operations of and assure the continuation of representative government in America, including the protection and regulation of public health, safety, and welfare by protecting public participation in government programs, public policy decisions, and other actions;
- (4) Establish a balanced, uniform, and comprehensive process for speedy adjudication of SLAPPs as a major contribution to lawsuit reform; and
- (5) Provide for attorney fees, costs, and damages for persons whose citizen participation rights have been violated by the filing of a SLAPP against them.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER CITIZEN PARTICIPATION IN GOVERNMENT ACT**

§ **-1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Governmental body” includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority.

“Judicial claim” or “claim” includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

“Lacks substantial justification” means substantially frivolous, substantially groundless, or substantially vexatious.

“Motion” includes any motion to dismiss, for summary judgment, for judgment on the pleadings or to strike, a demurrer, or any other judicial pleading filed to dispose of a judicial claim.

“Moving party” means any person on whose behalf the motion described in section -2 is filed seeking dismissal of the judicial claim.

“Person” includes any individual, corporation, association, organization, partnership, two or more persons having a joint or common interest, or other legal entity.

“Public participation” means any oral or written testimony submitted or provided to a governmental body during the course of a governmental proceeding.

“Responding party” means any person against whom the motion described in section -2 is filed.

“SLAPP” means a strategic lawsuit against public participation and refers to a lawsuit that lacks substantial justification or is interposed for delay or harassment and that is solely based on the party’s public participation before a governmental body.

**§ -2 Required procedures; motion.** Notwithstanding any law to the contrary, including rules of court, upon the filing of any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or involves public participation and is a SLAPP lawsuit:

- (1) The motion shall be treated as a motion for judgment on the pleadings, matters outside the pleadings shall be excluded by the court, and the court shall expedite the hearing of the motion;
- (2) The moving party shall have a right:
  - (A) To an immediate appeal from a court order denying the motion; and
  - (B) To file an application for a writ of mandamus if the court fails to rule on the motion in an expedited fashion;
- (3) Discovery shall be suspended, pending decision on the motion and appeals;
- (4) The responding party shall:
  - (A) Without leave of court, have seven days to amend its pleadings to be pled with specificity, and shall include such supporting particulars as are peculiarly within the supporting pleader’s knowledge; and
  - (B) Have the burden of proof and persuasion on the motion;
- (5) The court shall make its determination based upon the allegations contained in the pleadings;
- (6) The court shall grant the motion and dismiss the judicial claim, unless the responding party has demonstrated that more likely than not, the respondent’s allegations do not constitute a SLAPP lawsuit as defined in section -1;
- (7) Any governmental body to which the moving party’s acts were directed or the attorney general in the case of a state governmental body, or the county attorney or corporation counsel in the case of a county governmental body may intervene to defend or otherwise support the moving party in the lawsuit;
- (8) The court shall award a moving party who prevails on the motion, without regard to any limits under state law:
  - (A) Actual damages or \$5,000, whichever is greater;

- (B) Costs of suit, including reasonable attorneys' and expert witness fees, incurred in connection with the motion; and
- (C) Such additional sanctions upon the responding party, its attorneys, or law firms as the court determines shall be sufficient to deter repetition of the conduct and comparable conduct by others similarly situated; and
- (9) Any person damaged or injured by reason of a claim filed in violation of their rights under this chapter may seek relief in the form of a claim for actual or compensatory damages, as well as punitive damages, attorneys' fees, and costs, from the person responsible.

§ -3 **Relationship to other laws.** Nothing in this chapter shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

§ -5<sup>1</sup> **Rule of construction.** This chapter shall be construed liberally to fully effectuate its purposes and intent."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

**Note**

- 1. Should be "§ -4".

**ACT 188**

H.B. NO. 1357

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-1.4, Hawaii Revised Statutes, is amended to read as follows:

**“[[§321-1.4[]] Hospital and medical facilities special fund; deposits; expenditures.** (a) There is established within the department of health, to be administered by the department of health, the hospital and medical facilities special fund into which shall be deposited all moneys collected under section 321-11.5(b).

(b) Moneys in the special fund shall be expended by the department [tø];

(1) To assist in offsetting educational program expenses of the department's hospital and medical facilities branch[-]; and

(2) For the purpose of enhancing the capacity of hospital and medical facilities programs to:

(A) Improve public outreach efforts and consultations to industries regulated; and

(B) Educate the public, the staff of the department of health, hospitals, nursing homes, and care homes, and industries regulated.

Not more than \$230,000 of the special fund may be used during any fiscal year for education.

(c) Any amount in the special fund in excess of \$356,000 on June 30 of each year shall be deposited into the general fund.

(d) The department of health shall submit a report to the legislature concerning the status of the special fund, including the amount of moneys deposited into and expended from the special fund, and the sources of receipts and uses of expenditures, no later than twenty days prior to the convening of each regular session."

SECTION 2. Section 321-15.6, Hawaii Revised Statutes, is amended to read as follows:

**"§321-15.6 Adult residential care homes; licensing.** (a) All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein.

(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 which shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of adult residential care homes; provided that the rules shall allow group living in two categories of adult residential care homes as licensed by the department of health:
  - (A) Type I allowing group living by five or fewer unrelated persons; and
  - (B) Type II allowing six or more persons including but not limited to the mentally ill, elders, the handicapped, the developmentally disabled, or totally disabled persons who are not related to the home operator or facility staff.

For purposes of this section:

"Mentally ill person" means a mentally ill person as defined under section 334-1.

"Elder" means an elder as defined under sections 201G-1 and 201G-151.

"Handicapped person" means an individual with a physical handicap as defined under section 515-2.

"Developmentally disabled person" means a person with developmental disabilities as defined under section 333F-1.

"Totally disabled person" means a person totally disabled as defined under section 235-1;

- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.

(c) The department may provide for the training of and consultations with operators and staff of any facility licensed under this section, in conjunction with any licensing thereof, and shall adopt rules to ensure that adult residential care home operators shall have the needed skills to provide proper care and supervision in a home environment as required under department rules.

(d) The department shall establish a standard admission policy and procedure which shall require the provision of information that includes the appropriate medical and personal history of the patient as well as the level of care needed by the patient prior to the patient's referral and admission to any adult residential care home facility. The department shall develop appropriate forms and patient summaries for this purpose.

(e) The department shall maintain an inventory of all facilities licensed under this section and shall maintain a current inventory of vacancies therein to facilitate the placement of individuals in such facilities.

(f) The department shall develop and adopt a social model of health care to ensure the health, safety, and welfare of individuals placed in adult residential care homes. The model of care shall be designed to protect the health, safety, civil rights, and rights of choice of the persons to reside in a nursing facility or in home- or community-based care.

(g) Any fines collected by the department for violations of this section shall be deposited into the general fund."

SECTION 3. The Healthcare Association of Hawaii shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2003 on the status of how hospitals in the State handle and provide for the security of the personal effects of hospital patients. The report shall include a detailed summary of personal effects that were reported missing by hospital patients during the 2002 calendar year, including:

- (1) A summary of the types of items reported missing;
- (2) Action taken by the hospital in response to the report of missing items; and
- (3) Suggestions for improving procedures to respond to reports of missing items, including suggested legislation, if necessary.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

## ACT 189

H.B. NO. 1843

A Bill for an Act Relating to Collective Bargaining in Public Employment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 89-11, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

"(d) If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (5), teachers and other personnel of the department of education; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (7), faculty of the University of Hawaii and the community college system; bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; ~~bargaining unit (9), registered professional nurses;~~ or bargaining unit (13), professional and scientific employees, the board shall assist in the resolution of the impasse as follows:

- (1) Voluntary mediation. During the first twenty days of the date of impasse, either party may request the board to assist in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public from a list of qualified persons maintained by the board.

- (2) Fact-finding. If the impasse continues twenty days after the date of impasse, the board shall immediately appoint a fact-finding panel of not more than three members, representative of the public from a list of qualified persons maintained by the board. The fact-finding panel shall, in addition to powers delegated to it by the board, make recommendations for the resolution of the impasse pursuant to subsection (f). The fact-finding panel, acting by a majority of its members, shall transmit a report on its findings of fact and recommendations for the resolution of the impasse to both parties within sixty days after its appointment and notify the board of the date when it transmitted the fact-finding report.
  - (3) Mediation. If the impasse continues ten days after the transmittal of the fact-finding report, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse. The parties shall make the fact-finding report available to the mediator or mediators.
  - (4) Fact-finding report made public. If the impasse continues sixty days after the transmittal of the fact-finding report, the parties shall make available to the board the fact-finding report which shall be released by the board for public information.
  - (5) Submission of fact-finding report and response of the parties. If the impasse continues and the parties have not mutually agreed to submit the dispute to arbitration for a decision by January 31 of an odd-numbered year, the employers shall submit on February 1 to the appropriate legislative bodies the employers' recommendations for the settlement of the impasse on all cost items together with the fact-finding report. The exclusive representative may submit to the appropriate legislative bodies its recommendations for the settlement of the cost items in impasse.
- (e) If an impasse exists between a public employer and the exclusive representative of bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health, and correctional workers; bargaining unit (11), firefighters; or bargaining unit (12), police officers, the board shall assist in the resolution of the impasse as follows:
- (1) Mediation. During the first twenty days after the date of impasse, the board shall immediately appoint a mediator, representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse.
  - (2) Arbitration. If the impasse continues twenty days after the date of impasse, the board shall immediately notify the employer and the exclusive representative that the impasse shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.
    - (A) Arbitration panel. Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of such list, the parties

shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the neutral arbitrator and chairperson of the arbitration panel.

- (B) Final positions. Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final position which shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions which each party is proposing for inclusion in the final agreement.
- (C) Arbitration hearing. Within one hundred twenty days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit either in writing or through oral testimony, all information or data supporting their respective final positions. The arbitrator, or the chairperson of the arbitration panel together with the other two members, are encouraged to assist the parties in a voluntary resolution of the impasse through mediation, to the extent practicable throughout the entire arbitration period until the date the panel is required to issue its arbitration decision.
- (D) Arbitration decision. Within thirty days after the conclusion of the hearing, a majority of the arbitration panel shall reach a decision pursuant to subsection (f) on all provisions that each party proposed in its respective final position for inclusion in the final agreement and transmit a preliminary draft of its decision to the parties. The parties shall review the preliminary draft for completeness, technical correctness, and clarity and may mutually submit to the panel any desired changes or adjustments that shall be incorporated in the final draft of its decision. Within fifteen days after the transmittal of the preliminary draft, a majority of the arbitration panel shall issue the arbitration decision."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

## ACT 190

H.B. NO. 1996

A Bill for an Act Relating to the Administration of Taxes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-97, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) In the case of any underpayment of estimated tax, except as provided by this subsection, there shall be added to the tax for the taxable year an amount determined at the rate of two-thirds of one per cent a month or fraction of a month upon the amount of the underpayment for the period of the underpayment.

- (1) The amount of the underpayment shall be the excess of:

- (A) The required installment, over
- (B) The amount, if any, of the installment paid on or before the due date for the installment.
- (2) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:
  - (A) The twentieth day of the fourth month following the close of the taxable year, or
  - (B) With respect to any portion of the underpayment, the date on which the portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be credited against unpaid required installments in the order in which the installments are required to be paid.
- (3) For the purposes of this section, the term “tax” means the tax imposed under this chapter reduced by any credits available to the taxpayer other than the credit for amounts withheld from the taxpayer’s wages or taxes withheld at the source, if any, for the taxable year.
- (4) Sections 6654(d), (e)(2), (e)(3), (h), (i), (j), (k), and (l), (with respect to failure by an individual to pay estimated income tax), and 6655(d), (e), (g)(2), (g)(3), (g)(4), and (i) (with respect to failure by a corporation to pay estimated income tax) of the Internal Revenue Code, as of the date set forth in section 235-2.3(a), shall be operative for the purposes of this section; provided that the due dates contained in any of the preceding Internal Revenue Code sections shall be deemed to be the twentieth day of the applicable month; and provided further that, for purposes of this chapter in applying section 6654(d), if the adjusted gross income shown on the return of the individual for the preceding taxable year exceeds ~~[\$150,000,]~~ \$50,000, the required annual payment shall be the lesser of ~~[ninety]~~ sixty per cent of the tax shown on the return for the taxable year (or, if no return is filed, ~~[ninety]~~ sixty per cent of the tax for the taxable year) or one hundred ten per cent of the tax shown on the return of the individual for the preceding taxable year.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2003.

(Approved June 25, 2002.)

## ACT 191

H.B. NO. 2006

A Bill for an Act Relating to Special Wastes Recycling.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 342I-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342I-8]]~~ **Penalties.** (a) ~~[Civil:]~~ Any person who violates this part shall be fined not more than \$10,000 for each separate offense; provided that the failure to post the notice required under section 342I-2, following a warning issued by the director of health, shall be subject to a fine of \$2,000 for each separate offense. Each



battery improperly disposed of or accepted shall constitute a separate offense. The fines imposed pursuant to this subsection shall be cumulative. Remedies shall be by citation, administrative action, or civil action.

(b) ~~[Criminal.]~~ Any person who knowingly or wilfully violates this part shall be guilty of a misdemeanor.

(c) The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to:

- (1) Prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance;
- (2) Impose and collect civil penalties;
- (3) Collect administrative penalties; or
- (4) Obtain other relief.

The court may grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 2. Section 342I-23, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~342I-23~~(1)~~] Motor vehicle tires; collection for recycling.** (a) Each tire retailer shall:

- (1) Accept, at the point of transfer, in a quantity at least equal to the number of new motor vehicle tires purchased by a customer, motor vehicle tires offered by the customer.
- (2) Post written notice which shall be at least five inches by seven inches in size and easily visible to customers and shall contain the universal recycling symbol and the following language:
  - (A) “It is illegal to discard a motor vehicle tire”;
  - (B) “Recycle your used tires”;
  - (C) “State law requires us to accept used motor vehicle tires for recycling or disposal, in exchange for new tires purchased”;
  - (D) “The final price of a new tire includes disposal of your old tire<sup>[2]</sup>. The disposal fee is not subject to reduction or refund”.

(b) The department of health shall produce, print, and distribute the notices required by subsection (a)(2) to each retailer; provided that a retailer instead may use any sign or notice that meets the requirements of that subsection.

(c) Any advertising pertaining to the price of motor vehicle tires shall [include the statement “The price includes disposal of your old tire.”] disclose whether a separate disposal fee may be added to the final price of the tire and the actual cost of the disposal fee.

(d) For businesses utilizing advertising prepared out of the State a sign no smaller than three square feet, placed at the point of sale stating: “The price of tires includes disposal of your old tires” may be substituted.

(e) Motor vehicle rental companies shall be permitted to provide a report and payment of the surcharge annually, with the year ending December 31, rather than quarterly.”

SECTION 3. Section 342I-25, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~342I-25~~(1)~~] Motor vehicle tire wholesalers.** Any person selling new motor vehicle tires at wholesale shall accept at the point of transfer, in a quantity at least equal to the number of new tires purchased by a customer, used motor vehicle tires offered by the customer. A ~~[person]~~ motor vehicle tire wholesaler accepting

used tires in transfer from a motor vehicle tire retailer shall be allowed a period not to exceed ninety days to remove used tires from the retail point of collection. Accumulation of those tires at the retail point of collection shall not exceed two hundred fifty tires, unless the retail point of collection is an authorized tire collection facility, and the tires shall be stored in a manner consistent with fire prevention and vector control."

SECTION 4. Section 342I-27, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§342I-27[H] Motor vehicle tire surcharge.** (a) There is established a motor vehicle tire surcharge on tires imported into the State after September 30, 2000, and before January 1, 2006. The motor vehicle tire surcharge shall be \$1 per tire imported into the State and shall include those tires imported on motor vehicles, and their associated spare tires. Motor vehicle rental companies and companies that sell vehicles to motor vehicle rental companies may subtract the number of tires on motor vehicles that are exported from the State when calculating the motor vehicle tire surcharge. Upon approval of the director, a motor vehicle rental company that purchases new motor vehicles, within the State, may be designated as the importer of motor vehicles. No demand shall be made on the State for payment of surcharge credit if the number of exported motor vehicles exceeds the number of imported motor vehicles in any reporting period. The surcharge shall be paid by the person or entity who imports the tires, including importers of motor vehicles.

(b) The director shall waive the \$1 per tire surcharge requirement on Hawaii tire importers when the amount of the collected surcharge to be deposited into the special account in the environmental management special fund established pursuant to section 342G-63 has reached a total of between \$2,750,000 and \$3,000,000. If the remaining balance in the special account in the environmental management special fund is less than \$100,000 in unencumbered funds and there is a need for additional tire cleanup and associated environmental assessments and remediation, the director may reinstate the \$1 per tire surcharge with ninety days written notice to tire importers.

SECTION 5. Section 342I-28, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) An importer who imports fifty or more tires, but fewer than or equal to two hundred tires, or a motor vehicle rental company shall be permitted to provide a report and payment of the surcharge annually, with year ending December 31[, rather than quarterly].”

SECTION 6. The Department of Health shall submit a report on the status of the special account in the environmental management special fund established pursuant to section 342G-63 and on the status of tire cleanup projects for tire cleanup and associated environmental assessments and remediation.

The Department of Health shall submit annual reports of its findings and recommendations, including proposed legislation if applicable, to the Legislature no later than twenty days prior to the beginning of each legislative session.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2002, and section 4 shall be repealed on January 1, 2006.

(Approved June 25, 2002.)

ACT 192

H.B. NO. 2065

A Bill for an Act Relating to Nurses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 457-8.6, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§457-8.6~~]]~~ Prescriptive authority for advanced practice registered nurses.** The ~~[department of commerce and consumer affairs]~~ board shall grant prescriptive authority to qualified advanced practice registered nurses~~;~~ ~~provided that the board of medical examiners]~~ and shall designate the requirements for advanced nursing practice related to prescriptive authority ~~[applicable formularies; provided further that the]~~. The board of medical examiners shall submit an ~~[interim]~~ annual report ~~[on the establishment]~~ of the formularies ~~[by December 31, 1994.]~~ to the board of nursing.

SECTION 2. The department of commerce and consumer affairs shall establish a joint formulary advisory committee composed of:

- (1) Two persons licensed as advanced practice registered nurses and appointed by the board of nursing;
- (2) Two persons licensed in medicine by the board of medical examiners and appointed by the board of medical examiners;
- (3) Three persons licensed as pharmacists and appointed by the board of pharmacy;
- (4) One representative of the John A. Burns school of medicine appointed by the dean of the University of Hawaii school of medicine; and
- (5) One representative from a school of nursing with an APRN program.

The joint formulary advisory committee shall recommend the applicable formulary for persons recognized under this Act. The board of medical examiners shall consider the recommendations of the joint formulary advisory committee in adopting the formulary. A collegial working relationship with licensed physicians shall be reflected in rules adopted by the board of nursing in accordance with chapter 91, Hawaii Revised Statutes.

The board of nursing shall establish nursing requirements for education, experience, and national certification pursuant to rules adopted in accordance with chapter 91, Hawaii Revised Statutes.

SECTION 3. The joint formulary advisory committee shall submit a report to the legislature on its activities and recommendations with respect to the prescriptive authority formulary for advanced practice registered nurses no later than twenty days prior to the regular session of 2004.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2002, and shall be repealed on June 30, 2004, except that title 16, chapter 89C, Hawaii administrative rules, shall remain in effect until the board of nursing adopts rules pursuant to section 2 of this Act.

(Approved June 25, 2002.)

ACT 193

H.B. NO. 2165

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I

SECTION 1. Section 302A-602, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-602 Teachers; licenses and certificates**~~[-, licenses, and credentials]~~. (a) No person shall serve as a teacher in the department without first having obtained a license from the Hawaii teacher standards board in such form as the Hawaii teacher standards board determines. The department shall establish types of certificates in the educational field and the requirements to qualify for those certificates issued to individuals who are not required to obtain a license pursuant to sections 302A-801 to ~~[302A-809.]~~ 302A-808.

(b) Beginning with the 2002-2003 school year, no person paid under the salary schedule contained in the unit 5 collective bargaining agreement shall serve as a teacher in the department without first having obtained a license pursuant to sections 302A-801 to ~~[302A-809]~~ 302A-808 from the Hawaii teacher standards board in such form as the Hawaii teacher standards board determines.

(c) Beginning with the 2002-2003 school year, the department may employ unlicensed individuals as emergency hires pursuant to sections 302A-801 to 302A-808.”

SECTION 2. Section 302A-602.5, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-602.5 [Licenses;] Certificates; revocation.** ~~[(a) The board may revoke any license after its issuance if the license holder does not possess the requisite qualifications. The board shall provide the license holder an opportunity to justify retaining the license before its revocation.~~

~~(b) Upon revocation of the license, the board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the license related to the revocation for the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had licenses revoked.] The department may revoke any certificate after its issuance if the certificate holder does not possess the requisite qualifications. For the purposes of this section, the term “certificate” does not include a license issued by the Hawaii teacher standards board pursuant to part III, subpart D.”~~

SECTION 3. Section 302A-603, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-603 Teaching without certificates or licenses; penalty.** (a) Except as otherwise provided, before the 1997-1998 school year, whoever serves in the department as a teacher without holding an unrevoked certificate issued under sections 302A-602 to 302A-640, and 302A-701, shall be fined not more than \$25.

(b) Beginning with the ~~[2002-2003]~~ 1997-1998 school year, whoever serves in the department as a teacher, paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked or unsuspended license or credential issued under sections 302A-801 to ~~[302A-809,]~~ 302A-808, shall be fined not more than \$500.

(c) Beginning with the 2002-2003 school year, an individual ~~[not]~~ paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked ~~[certificate]~~ license issued under sections ~~[302A-602 to 302A-640, and 302A-701,]~~ 302A-801 to 302A-808, shall be fined not more than \$500.

(d) Beginning with the 2002-2003 school year, emergency hires shall not be subject to this penalty.”

SECTION 4. Section 302A-803, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-803 Powers and duties of the board.** In addition to establishing standards for the issuance and renewal of licenses ~~[and credentials]~~ and any other powers and duties authorized by law, the board’s powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, repealing, or suspending the policies, standards, or rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations, and state and federal funds;
- (4) Submitting an annual report to the governor and the legislature on the board’s operations and from the 2007-2008 school year, submitting a summary report every five years of the board’s accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing ~~[and credentialing]~~ fees in accordance with chapter 91, including the collection of fees by means of mandatory payroll deductions, which shall subsequently be deposited into the state treasury and credited to the Hawaii teacher standards board revolving fund;
- (7) Establishing penalties in accordance with chapter 91;
- ~~[(8) Granting extensions of credentials on a case-by-case basis pursuant to section 302A-805; provided that this paragraph shall be repealed on June 30, 2002;~~
- ~~[(9)]~~ (8) Issuing, renewing, revoking, suspending, and reinstating licenses ~~[and credentials]~~;
- ~~[(10)]~~ (9) Reviewing reports from the department ~~[concerning the number of]~~ on individuals hired on an emergency basis;
- ~~[(11)]~~ (10) Applying licensing ~~[and credentialing]~~ standards on a case-by-case basis and conducting licensing ~~[and credentialing]~~ evaluations;
- ~~[(12)]~~ (11) Preparing and disseminating teacher licensing information to schools and operational personnel;
- ~~[(13)]~~ (12) Approving teacher preparation programs;
- ~~[(14)]~~ (13) Administering reciprocity agreements with other states relative to licensing;

- [(15)] (14) Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;
- [(16)] (15) Participating in efforts relating to teacher quality issues, conducting professional development related to the board's standards, and promotion of high teacher standards and accomplished teaching; and
- [(17)] (16) Adopting applicable rules and procedures."

SECTION 5. Act 312, Session Laws of Hawaii 2001, is amended by amending section 14 to read as follows:

"SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$86,807, or so much thereof as may be necessary for fiscal year 2001-2002 to establish the technological and personnel infrastructure necessary to conduct the licensing and renewal function of the Hawaii teacher standards board including the hiring of staff and the sum of \$347,228, or so much thereof as may be necessary for fiscal year 2002-2003 to conduct the new functions of, including the hiring of staff for, the Hawaii teacher standards board. The department of education and the department of human resources development shall facilitate the transfer or establishment of positions as required by the Hawaii teacher standards board for this purpose. The department of education shall transfer one personnel specialist to the Hawaii teacher standards board on April 1, 2002.

The sums appropriated shall be expended by the department of education for the purposes of this Act."

SECTION 6. This part shall be applied only on a prospective basis.

## PART II

SECTION 7. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§302A- Instructional materials.** (a) Whenever used in this section, unless a different meaning clearly appears from the context:

"Braille" means the system of reading and writing through touch commonly known as standard English braille.

"Textbooks and other instructional materials" means any literary or nonliterary works obtained for use in a course of study.

(b) All publishers of textbooks or other instructional materials sold to the State or any local education agency shall furnish computer diskettes for literary subjects in the American Standard Code for Information Interchange from which braille versions can be produced. Publishers shall also furnish computer diskettes in American Standard Code for Information Interchange for nonliterary subjects including natural sciences, computer science, mathematics, and music when braille specialty code translation software is available.

(c) This section shall not apply to publishers of textbooks and other instructional materials written in the Hawaiian language."

## PART III

SECTION 8. There is appropriated out of the Hawaii teacher standards board special fund the sum of \$850,000 or so much thereof as may be necessary for fiscal year 2002-2003 to conduct the functions of the board.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

## ACT 194

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 194

H.B. NO. 2176

A Bill for an Act Relating to Agricultural Marketing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The agriculture industry in Hawaii is experiencing a rebirth. Gone are the days of huge sugar and pineapple plantations. In their place is a new era of diversified agriculture that has the potential to provide unprecedented economic and employment opportunities.

At the center of this new era is a hard-working, hearty group of successful entrepreneurs that have mastered the intricacies of agricultural production and marketing. Their success, however, is more of the exception rather than the rule. Many farmers still struggle to make ends meet. Although earnest in their efforts, they lack the wherewithal to adequately market their produce to a growing local and foreign demand.

The purpose of this Act is to assist farmers with marketing their produce and products by assisting existing agricultural cooperatives to develop a marketing plan and strategy that fully represents all segments of the diversified agricultural sector in Maui.

SECTION 2. The agribusiness development corporation shall provide its knowledge and resources, as well as solicit assistance from successful local agricultural entrepreneurs and other sources to develop a marketing plan and strategy that fully represents all segments of the diversified agricultural sector in Maui.

SECTION 3. The agribusiness development corporation shall annually report its findings, recommendations, and progress to the legislature no later than twenty days before the convening of each regular session, beginning with the session of 2003.

SECTION 4. The corporation may adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to effectuate this Act.

SECTION 5. This Act shall take effect upon its approval and shall be repealed on June 30, 2005.

(Approved June 25, 2002.)

## ACT 195

H.B. NO. 2276

A Bill for an Act Relating to Collective Bargaining.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 89-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any collective bargaining agreement reached between the employer and the exclusive representative shall be subject to ratification by the employees concerned, except for an agreement reached pursuant to an arbitration decision. Ratification is not required for other agreements effective during the term of the collective bargaining agreement, whether a supplemental agreement, an agreement on reopened items, or a memorandum of agreement, and any agreement to extend the term of the collective bargaining agreement. The agreement shall be reduced to writing and executed by both parties. Except for cost items~~[-]~~ and any non-cost items that are tied to or bargained against cost items, all provisions in the agreement that are in conformance with this chapter, including a grievance procedure and an impasse procedure culminating in an arbitration decision, shall be valid and enforceable and shall be effective as specified in the agreement, regardless of the requirements to submit cost items under this section and section 89-11.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

## ACT 196

H.B. NO. 2311

A Bill for an Act Relating to Judges for the Circuit Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 603-4, Hawaii Revised Statutes, is amended to read as follows:

“**§603-4 Other circuits~~[-]~~; judges.** The circuit court of the fifth circuit shall consist of two judges, who shall be styled as first and second judge, ~~[respectively,]~~ and each as a judge of the circuit court of the fifth circuit. The circuit court of the second circuit shall consist of ~~[three]~~ four judges, who shall be styled as first, second, ~~[and]~~ third, and fourth judge, ~~[respectively,]~~ and each as a judge of the circuit court of the second circuit. The circuit court of the third circuit shall consist of ~~[three]~~ four judges, who shall be styled as first, second, ~~[and]~~ third, and fourth judge, ~~[respectively,]~~ and each as a judge of the circuit court of the third circuit.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)



A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-201, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§302A-201]]~~ Statewide performance standards.** (a) The board shall establish statewide performance standards and the means to assess the standards based upon the recommendations in the final report of the performance standards commission established pursuant to Act 334, Session Laws of Hawaii 1991; provided that the board may review and modify the performance standards, as the board deems necessary, to reflect the needs of public school students and educational goals adopted by the board.

(b) The board shall appoint a performance standards review commission, to be convened at the beginning of the 1997-1998 school year, and every four years thereafter, to assess the effectiveness of the performance standards. The commission shall include representatives of the Hawaii State Parent, Teacher, Student Association; the Hawaii State Student Council; the superintendent; the dean of the college of education of the University of Hawaii; and the professional education community. The commission may request the assistance of such department or school staff as may be necessary to facilitate its review.

(c) The commission shall review the implementation of the performance standards by the board and the schools to determine whether the standards should be modified. In making this determination, the commission shall seek public input by holding public forums to discuss the implementation and effectiveness of the performance standards. The commission shall submit a report of its findings and recommendations regarding the effectiveness of the standards and the need for modification of the standards to the board and the legislature prior to the convening of the 1999 regular session. The board shall consider and implement the modifications beginning with the 1999-2000 school year.

(d) Notwithstanding any law to the contrary, the department shall establish procedures and guidelines for, and shall expand, its statewide assessment program to include norm-referenced testing in the same grades as required by the federal No Child Left Behind Act of 2001 (Public Law 107-110) standards-based assessment (grades 3 through 8 and one grade in high school) in reading and math, using the most appropriate nationally normed test.”

SECTION 2. The department of education shall expend the funds necessary to carry out the purposes of this Act from its general fund appropriation; provided that the department may also use federal funds provided to the department pursuant to the No Child Left Behind Act of 2001 (Public Law 107-110).

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

## ACT 198

H.B. NO. 2387

A Bill for an Act Relating to the Penal Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 711-1107, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) ~~[Deseccration is a misdemeanor.]~~ Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

## ACT 199

H.B. NO. 2413

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is necessary to amend the Hawaii Revised Statutes to address the powers of condominium associations in situations in which some lessees have already purchased their leased fee interests from the lessor.

The purpose of this Act is to empower condominium associations to purchase the remainder of the lessor's interest at the sole cost of the remaining lessees.

SECTION 2. Section 514C-22, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§514C-22]~~ Power of association of apartment owners to negotiate, purchase, and sell lessor's interest.** (a) The association of apartment owners may purchase the lessor's interest in the condominium project; provided that the declaration of condominium property regime shall either contain or be amended to include a provision authorizing the board of directors to effectuate such a purchase. If the lessor is also a condominium unit lessee, the lessor's lessee interest shall be disregarded in the computation of the percentage of condominium unit lessees needed to achieve the vote or written consent required to amend the declaration of condominium property regime.

(b) If the association of apartment owners is authorized to purchase the lessor's interest pursuant to this section, the following powers, in addition to any other existing powers, shall be conferred upon the association of apartment owners:

- (1) To purchase or otherwise acquire, own, improve, use, and deal in and with the lessor's interest in the leased fee interest appurtenant to the various condominium units in the condominium project and in the various apartment and ground leases including but not limited to the interest of any sublessor or any or all undivided interests therein;

- (2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge all or any portion of its property, assessments, and funds to effectuate acquisition of the lessor's interest;
- (3) To assess, except as provided in subsection (d), as a common expense, [the condominium unit lessees for] the expenses incurred in acquiring [the lessor's] and holding the leased fee interest, [or] and to service any debt associated therewith; and
- (4) To sell the leased fee interest [appurtenant to] in a condominium unit and acquired from the lessor by the association of apartment owners, to [any] the then condominium unit lessee or subsequent purchaser of such unit[-]; provided that if the lessee or subsequent purchaser declines to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the association of apartment owners' intent to sell the leased fee interest to such other persons, and the disclosure includes a statement that the lessees may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the lessees.

(c) No condominium unit lessee shall be compelled to purchase ~~[the portion of] the leased fee interest [of the property appurtenant to the lessee's] in such~~ condominium unit and acquired from the lessor by the association of apartment owners, but may instead pay lease rent to the association of apartment owners together with the lessee's share of the common expenses incurred in acquiring the leased fee interest [to the land,] in the condominium units in the project including any debt associated therewith.

(d) If some, but not all, lessees have purchased the leased fee interest in their condominium units directly from the lessor, (other than purchases by the lessor or the association of apartment owners), the association of apartment owners may undertake the purchase of all or any part of the leased fee interest in the remaining leasehold condominium units in the project in accordance with subsection (b); provided that:

- (1) Seventy-five per cent of the remaining lessees approve an amendment to the declaration authorizing the purchase of the leased fee interest by the association consistent with the requirements of this section;
- (2) All costs and expenses and all proceeds and benefits of acquiring and holding the leased fee interest and to service any debt associated therewith shall be separately assessed or credited to the condominium units of the remaining lessees in the same ratio that the common interest appurtenant to each remaining lessees' apartment bears to the total common interest appurtenant to all of the remaining lessees' condominium units;
- (3) The association of apartment owners shall sell the leased fee interest in a condominium unit only to the lessee of the condominium unit or to the permitted assigns or successors of the lessee; provided that if the lessee or the lessee's permitted assigns or successors decline to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the association of apartment owners' intent to sell the leased fee interest to the other persons and the disclosure includes a statement that the lessees may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the lessees; and
- (4) The association of apartment owners, through its board of directors in the exercise of its authority, may decide not to accept an offer from the

lessor to sell all of the remaining portion of the lessor's interest to the association of apartment owners on the basis that the purchase is not financially feasible or is otherwise not in the best interests of the association. In that event, the board shall adopt a resolution containing written findings as to its reasons for not accepting the offer and shall distribute the resolution to the remaining lessees.

(e) If the association of apartment owners acquires all of the remaining portion of the lessor's interest in accordance with subsection (d), any debt associated therewith shall be secured only by the interests so acquired and by the common expense assessments upon the condominium units of the remaining lessees.

(f) For purposes of this section:

"Remaining lessees" means the lessees of condominium units in a condominium project who have not purchased the leased fee interest in their condominium units as of the effective date of the amendment referred to in subsection (d)(1).

"Condominium unit" has the same meaning as the term "apartment" as defined in section 514A-3."

SECTION 3. No purchase or conveyance of leased fee interest or allocation of costs made prior to the effective date of this Act, to or by an association of apartment owners in a good faith belief that the purchase, conveyance, or allocation was valid, and no assessment, borrowing, mortgage, or pledge by an association of apartment owners in connection therewith, shall be invalid because the association was without capacity or power to undertake the act or to make or receive the allocation, conveyance, transfer, or loan. No apartment owner shall be excused from paying the owner's share of the common expenses incurred in acquiring the leased fee interest to the land or to service any debt associated therewith, on account of the association's lack of capacity or power.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

## ACT 200

H.B. NO. 2426

A Bill for an Act Relating to Crimes Against Children.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding four new sections to Part VI to be appropriately designated and to read as follows:

**"§707- Electronic enticement of a child in the first degree.** (1) Any person who, using a computer or any other electronic device:

(a) Intentionally or knowingly communicates:

- (i) With a minor known by the person to be under the age of eighteen years;
- (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or

- (iii) With another person who represents that person to be under the age of eighteen years; and
- (b) With the intent to promote or facilitate the commission of a felony:
  - (i) That is a murder in the first or second degree;
  - (ii) That is a class A felony; or
  - (iii) That is an offense defined in section 846E-1;
 agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and
- (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time;

is guilty of electronic enticement of a child in the first degree.

(2) Electronic enticement of a child in the first degree is a class B felony.

**§707- Electronic enticement of a child in the second degree.** (1) Any person who, using a computer or any other electronic device:

- (a) Intentionally or knowingly communicates:
  - (i) With a minor known by the person to be under the age of eighteen years;
  - (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
  - (iii) With another person who represents that person to be under the age of eighteen years; and
- (b) With the intent to promote or facilitate the commission of a felony, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and
- (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time;

is guilty of electronic enticement of a child in the second degree.

(2) Electronic enticement of a child in the second degree is a class C felony.

**§707- Promoting child abuse in the third degree.** (1) A person commits the offense of promoting child abuse in the third degree if, knowing or having reason to know its character and content, the person possesses:

- (a) Child pornography;
- (b) Any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or
- (c) Any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

“Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

- (a) The pornographic production of the visual representation involves the use of a minor engaging in sexual conduct; or
- (b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State.

“Computer” shall have the same meaning as in section 708-890.

“Lascivious” means tending to incite lust, to deprave the morals with respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than eighteen years old.

“Pornographic” shall have the same meaning as in section 712-1210.

“Sodomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sodomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” includes but is not limited to undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the third degree is a class C felony.

**§707- Affirmative defense to promoting child abuse.** It shall be an affirmative defense to a charge of promoting child abuse in the third degree that the defendant:

- (a) Possessed less than three images of child pornography; and
- (b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof:
  - (i) Took reasonable steps to destroy each such image; or
  - (ii) Reported the matter to a law enforcement agency and afforded that agency access to each such image.”

SECTION 2. Section 707-750, Hawaii Revised Statutes, is amended by amending subsections (1) and (2) to read as follows:

“(1) A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person [produces,]:

- (a) Produces [directs,] or participates in the preparation of child pornography;
- (b) Produces or participates in the preparation of pornographic material [or engages] that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or
- (c) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

“Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

- (a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State.

“Computer” shall have the same meaning as in section 708-890.

“Lascivious” means tending to [~~excite~~] incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than [~~sixteen~~] eighteen years old.

“Performance” means any play, motion picture film, dance, or other exhibition performed before any audience.

“Pornographic” shall have the same meaning as [defined] in section 712-1210.

“Produces” means to produce, direct, manufacture, issue, publish, or advertise.

“Sodomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sodomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.”

SECTION 3. Section 707-751, Hawaii Revised Statutes, is amended to read as follows:

**“§707-751 Promoting child abuse in the second degree.** (1) A person commits the offense of promoting child abuse in the second degree if, knowing or having reason to know its character and content, the person [~~possesses or disseminates~~]:

- (a) Disseminates child pornography;
- (b) Reproduces child pornography with intent to disseminate;
- (c) Disseminates any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or
- (d) Disseminates any pornographic material which employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

“Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

- (a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or
- (b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

“Community standards” means the standards of the State.

“Computer” shall have the same meaning as in section 708-890.

“Disseminate” means to publish, sell, distribute, transmit, exhibit, [or] present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording[,] and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than ~~sixteen~~ eighteen years old.

“Pornographic” shall have the same meaning as ~~defined~~ in section 712-1210.

“Sodomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sodomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

“Visual representation” refers to, but is not limited to, undeveloped film and videotape, and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the second degree is a class [C] B felony.”

SECTION 4. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“**§712A-4 Covered offenses.** Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, [or] commercial promotion of marijuana, promoting child abuse, or electronic enticement of a child which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and
- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.”

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.



SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 201**

H.B. NO. 2427

A Bill for an Act Relating to Victims of Crimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 657, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§657- Extension by sentencing of criminal defendant.** Notwithstanding any law to the contrary, for any victim of a particular crime, for surviving immediate family members of a victim, or for the estate of a victim, the statute of limitations for any civil cause of action against a person convicted of that crime shall be tolled from the moment the civil cause of action arises until the person convicted of that crime is released from imprisonment, released from parole, or released from probation and is no longer under the jurisdiction of the court for that crime, if:

- (1) The crime upon which the civil action is based is a felony; or
- (2) The victim of the crime upon which the civil action is based is the victim of a “sexually violent offense” or a “criminal offense against a victim who is a minor”, as defined by section 846E-1.”

SECTION 2. Section 801D-4, Hawaii Revised Statutes, is amended to read as follows:

**“§801D-4 Basic bill of rights for victims and witnesses.** (a) Upon written request, victims and surviving immediate family members of crime shall have the following rights:

- (1) To be informed by the police and the prosecuting attorney of the final disposition of the case. If the crime charged is a felony, the victim or a surviving immediate family member shall be notified of major developments in the case and whenever the defendant or perpetrator is released from custody. The victim or a surviving immediate family member shall also be consulted and advised about plea bargaining by the prosecuting attorney;
- (2) To be notified by the prosecuting attorney if a court proceeding to which they have been subpoenaed will not proceed as scheduled;
- (3) To receive protection from threats or harm;
- (4) To be informed by the police, victim/witness counselor, or other criminal justice personnel, of financial assistance and other social services available as a result of being a witness to or a victim of crime, including information on how to apply for the assistance and services;

- (5) To be provided by the court, whenever possible, with a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;
- (6) To have any stolen or other personal property expeditiously returned by law enforcement agencies when the property is no longer needed as evidence. If feasible, all the property, except weapons, currency, contraband, property subject to evidentiary analysis, and property, the ownership of which is disputed, shall be returned to the person within ten days of being taken; and
- (7) To be informed by the department of public safety of changes planned by the department in the custodial status of the offender that allows or results in the release of the offender into the community, including escape, furlough, work release, placement on supervised release, release on parole, release on bail bond, release on appeal bond, and final discharge at the end of the prison term.

(b) Upon written request, the victim or the parent or guardian of a minor or incapacitated victim of an offense under section 707-730, 707-731, or 707-732(1)(a) shall have the right to be informed of the human immunodeficiency virus (HIV) status of the person who has been convicted or a juvenile who has been adjudicated under that section and to receive counseling regarding HIV. The testing shall be performed according to the protocols set forth in section 325-17. Upon request of the victim, or the parent or guardian of a minor or incapacitated victim, the department of health shall provide counseling.

(c) Notwithstanding any law to the contrary, the department of public safety, the Hawaii paroling authority, the judiciary probation divisions and branches, and the department of the attorney general shall make good faith efforts to notify the victim of a crime, or surviving immediate family members of a victim, of income received by a person imprisoned for that crime when the imprisoned person has received a civil judgment that exceeds \$10,000, a civil settlement that exceeds \$10,000, or any income that exceeds \$10,000 in one fiscal year, whenever the income is known to the agency, and, in addition, the department of public safety shall make good faith efforts to notify the victim of a crime or surviving immediate family members of a victim, whenever it is known to the agency that a person imprisoned for that crime has a financial account, of which the department of public safety is aware, of a value exceeding \$10,000.

(d) Notwithstanding any law to the contrary, payment of restitution and judgments to victims, or surviving immediate family members of a victim, shall be a precondition for release on parole for any imprisoned person whom the Hawaii paroling authority determines has the financial ability to make complete or partial restitution payments or complete or partial judgment payments to the victim of the person's crime, or to the surviving immediate family members of a victim.

(e) Notwithstanding any law to the contrary, the State of Hawaii, any political subdivision of the State of Hawaii, any department or agency of the State, any officer of the State, and any employee of the State shall be immune from damages in any lawsuit based on noncompliance with subsection (c) or (d). Nothing in this subsection shall be construed to prevent disciplinary action against any employee of the State who intentionally fails to comply with subsection (c) or (d) after being warned that compliance is required."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 202

H.B. NO. 2449

A Bill for an Act Relating to Small Business.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds a need to continue to provide relief from unduly burdensome rules for small businesses by amending the Small Business Regulatory Flexibility Act. The specific changes include:

- (1) Amending the definition of “small business” to focus regulatory relief efforts on those businesses too small to have the resources to respond to broad-based regulations;
- (2) Allowing the small business regulatory review board to make nominations to fill board vacancies;
- (3) Allowing the majority of the board to elect the chairperson;
- (4) Requiring the board to submit an annual report to the legislature;
- (5) Deleting the provision for a small business defender; and
- (6) Making the Small Business Regulatory Flexibility Act and the small business regulatory review board permanent through removal of the sunset date.

SECTION 2. Act 168, Session Laws of Hawaii 1998, is amended by amending the definition of “small business” in section -1 of the chapter established in section 2 of that Act to read as follows:

““Small business” means a for-profit enterprise consisting of fewer than [two] one hundred full-time or part-time employees.”

SECTION 3. Act 168, Session Laws of Hawaii 1998, is amended by amending section -5 of the chapter established in section 2 of that Act to read as follows:

“§ -5 **Small business regulatory review board; powers.** (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34. [~~Selection for the initial board shall come from a list of nominees submitted by the small business task force on regulatory relief. Thereafter, the nominations~~] Nominations to fill vacancies shall be made from names submitted by [any and all of the departmental advisory committees on small business:] the review board. The appointments shall reflect representation of a variety of [small] businesses in the State; provided that no more than two members shall be representatives from the same type of [small] business, and that there shall be at least two [small-business] representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a [small] business and shall not be an officer or employee of the federal,

state, or county government. ~~[The governor shall appoint the initial chair person of the board, and a] A majority of the board shall elect [subsequent chairpersons.] the chairperson.~~ The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation."

SECTION 4. Section 3, Act 168, Session Laws of Hawaii 1998, is repealed.

~~“[SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to title 3 to be appropriately designated and to read as follows:~~

#### ~~“CHAPTER— SMALL BUSINESS DEFENDER~~

~~§—1 Small business defender. (a) There is established within the legislature a small business defender. The small business defender shall be appointed by the senate president and speaker of the house of representatives. The senate president and speaker of the house of representatives shall determine the salary of the small business defender. The senate president and speaker of the house of representatives may also appoint administrative support personnel who shall assist and support the small business defender.~~

~~(b) Unless otherwise specifically provided by law, and upon written request by a small business, the small business defender may represent, defend, and provide legal representation to any small business, during any adjudicatory or contested proceeding involving any civil citation issued by a state or county agency in which the small business is a party; provided that the small business shall seek its own legal representation whenever the potential remedies against the small business may include fines or penalties that exceed \$25,000 or may result in the suspension or revocation of a license. The small business defender shall have the discretion to accept or refuse any case for good cause. The small business defender may also engage in the following activities:~~

- ~~(1) Advocate and negotiate, upon consultation with the small business regulatory review board, with federal, state, and county agencies and officials on any matter relating to and promoting the interests of small business;~~
- ~~(2) Conduct investigations to secure information useful in the lawful administration of any provision in this chapter;~~
- ~~(3) Refer any appropriate matter to the auditor or ombudsman for examination or investigation; and~~

(4) ~~Do any and all things necessary to effectuate the purposes of this chapter.~~

(e) ~~Each small business shall waive and release any and all claims, damages, causes of action, and any request for relief made against the small business defender or staff, the State or counties, their officers, employees, or agents, and arising from the legal representation of the small business by the small business defender provided under this section.~~

§—~~2 Annual report.~~ The small business defender shall submit an annual report to the legislature detailing its activities and expenditures no later than twenty days prior to convening of the regular session.”’]

SECTION 5. Act 168, Session Laws of Hawaii 1998, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 1998[~~—and shall be repealed as of June 30, 2002.~~.”’]

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on June 29, 2002.

(Approved June 25, 2002.)

## ACT 203

H.B. NO. 2710

A Bill for an Act Relating to Ocean Leasing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 11, Act 176, Session Laws of Hawaii 1999, is repealed. [“SECTION 11. The amendments made to chapter 190D, Hawaii Revised Statutes, by this Act shall be repealed five years after the effective date of this Act; provided that sections 190D-2, 190D-3, 190D-11, 190D-21, 190D-22, 190D-23, 190D-32, 190D-33, and 190D-34 shall be reenacted in the form in which they read on the day before the approval of this Act. The leases granted during the period in which this Act is effective, in addition to any terms agreed to therein, shall remain in force throughout the term of the lease and shall not be affected by the repeal of this Act upon the tolling of the five-year drop-dead period.”’]

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

## ACT 204

H.B. NO. 2832

A Bill for an Act Relating to Time Sharing Plans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-14.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section does not apply:

- (1) To apartments developed under chapter 201G; [and]
- (2) To apartments in a mixed-use project developed under chapter 206E that has a shared parking program approved by the Hawaii community development authority; provided that such a program shall require the availability of the use of not less than one parking space per apartment[-]; and
- (3) To apartments designated in the declaration of condominium property regime for hotel, time share, transient vacation rental, or commercial use.”

SECTION 2. Section 514A-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Prior to the time when a developer offers or proposes to offer for sale a time share plan located in a condominium project where apartments are being offered or proposed to be offered for sale for the first time to the public, the developer shall register the project with the commission and obtain an effective date for the developer’s public report; provided that the developer shall not be required to deliver to a prospective purchaser or purchaser a true copy of the developer’s public report or disclosure abstract, as required by this chapter, when a time share plan is duly registered under chapter 514E[, and for which a disclosure statement under chapter 514E is effective and required to be delivered to the purchaser or prospective purchaser.] if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.”

SECTION 3. Section 514A-41, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E[, and for which a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser.] if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.”

SECTION 4. Section 514A-61, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E~~[-, and for which a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser.]~~ if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.”

SECTION 5. Section 514A-62, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Notwithstanding any other provision to the contrary, this section shall not apply to a time share project duly registered under chapter 514E~~[-, and for which a disclosure statement is effective and required to be delivered to the purchaser or prospective purchaser.]~~ if, with regard to that time share project:

- (1) A copy of the disclosure statement required by chapter 514E is required to be delivered to the purchaser or prospective purchaser; or
- (2) Pursuant to section 514E-30, a copy of the disclosure statement required by chapter 514E is not required to be delivered to the purchaser or prospective purchaser because the offer and sale of the time share interest is made outside of Hawaii.”

SECTION 6. Section 514E-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director shall adopt rules limiting the activities of and governing sales agents and acquisition agents, regardless of whether such persons are also licensed under chapter 467. ~~[Such regulations:]~~ The rules:

- (1) May authorize an acquisition agent [who is], whether or not licensed under chapter 467, and its employees and independent contractors, whether or not licensed under chapter 467, to invite others to attend a time share sales presentation or an entertainment function offered in connection therewith, so long as [-such] the invitation is made from a principal place of business, branch office, [site office,] or other real estate place of business, or from a booth operated in accordance with state and county laws by the acquisition agent;
- (2) May authorize an acquisition agent [who is], whether or not licensed under chapter 467, and its employees and independent contractors, whether or not licensed under chapter 467, to extend invitations from a principal place of business, branch office, or other real estate place of business, or from a booth, without requiring the physical presence of a person licensed under chapter 467; provided that the acquisition agent’s employees remain in the principal place of business or the booth at all times;
- (3) Shall provide that any individual, who for compensation solicits or encourages others to attend a time share sales presentation or to contact a time share sales agent or developer, shall be employed, either directly or as an independent contractor, by a sales agent or acquisition agent;
- (4) Shall provide that a real estate broker or acquisition agent who employs, either directly or as an independent contractor, an individual[;] who is not licensed under chapter 467, to solicit or encourage others to attend a time share presentation or to contact a time share sales agent or developer, shall be responsible for the acts of [such] the employee;

- (5) Shall establish rules and conditions strictly regulating and, if legally permissible, prohibiting telephone solicitation of guests in hotels; and
- (6) Shall establish such other rules as the director deems to be in the public interest.”

SECTION 7. Section 514E-5, Hawaii Revised Statutes, is amended to read as follows:

“**§514E-5 Geographic limitations.** Except as provided in this section, time share units, time share plans, and transient vacation rentals are prohibited.

- (1) Existing time share units, time share plans, and transient vacation rentals are not impaired by the provisions of this section.
- (2) Time share units, time share plans, and transient vacation rentals are allowed:
  - (A) In areas designated for hotel use, resort use, or transient vacation rentals, pursuant to county authority under section 46-4, or where the county, by its legislative process, designates hotel, transient vacation rental, or resort use; [or]
  - (B) In a hotel where the county explicitly approves such use, in advance, as a nonconforming use[-]; or
  - (C)<sup>1</sup> In a county with a population in excess of five hundred thousand, in an existing hotel which is a valid non-conforming use under county ordinance; provided that the property shall have at least sixty units and at least forty per cent of the units, upon completion of sales of the time share intervals in the project, shall be made available for sale as residential apartments or rented as residential apartments.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

**Note**

- 1. Should be underscored.

**ACT 205**

S.B. NO. 2078

A Bill for an Act Relating to the Employees’ Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

“**§88-74 Allowance on service retirement.** Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained age fifty-five, a retirement allowance of two per cent of the member’s average final compensation multiplied by the total number of years of the member’s credited service as a class A and B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member’s average final compensation multiplied by the



total number of years of prior credited service as a class C member; provided that:

- (A) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
- (B) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
- (C) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
- (D) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
- (E) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer; ~~and~~
- (F) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety investigations staff investigator; and
- (G) After June 30, 2002, if the member has at least ten years of credited service as a firefighter, and is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician, and continues employment in a class A or B position other than a firefighter;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for a refund as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the

actuarial equivalent of the additional contributions with regular interest;

- (3) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
  - (A) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
  - (B) For a member who first earned credited service as a judge after June 30, 1999, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
  - (C) For a judge with other credited service, as provided in paragraphs (1) and (2). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
  - (D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph (4).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraphs (A) and (B) and the portion of the accumulated contributions specified in the subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or

- (4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:
  - (A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and
  - (B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
  - (C) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

- (i) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
- (ii) For a member who first earned credited service as a judge after June 30, 1999, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; and
- (D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section 88-81(d)(4) shall be multiplied by two per cent, two and one-half per cent, or one and one-quarter per cent, as applicable to the credited service earned as a class A, B, or C member, respectively. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(d)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 25, 2002.)

## ACT 206

S.B. NO. 2582

A Bill for an Act Relating to Captive Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:19-101.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All premium taxes collected from captive insurance companies licensed in this State under this article, all captive insurance company application fees, annual license fees, and examination fees collected pursuant to this article shall be credited to the captive insurance administrative fund. Each fiscal year, the commissioner shall transfer out of the fund and deposit into the insurance regulation fund a total of forty per cent of the total moneys credited to the fund in the prior fiscal year or ~~[\$250,000,]~~ \$1,500,000, whichever is greater, to pay for the expenditures contemplated by this section. In addition, each fiscal year, the commissioner shall transfer out of the fund and deposit into the insurance regulation fund up to ten per cent of the total moneys credited to the fund in the prior fiscal year for purposes of promoting Hawaii as a captive insurance domicile. Disbursements for promotional activities from the insurance regulation fund shall be subject to the approval of the director of commerce and consumer affairs. Subject to the foregoing expenditure limits, all moneys remaining in the fund shall revert to the general fund.”

SECTION 2. Section 431:19-116, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-116 Taxation.** (a) Each ~~[pure]~~ captive insurance company licensed to do business in this State shall pay to the director of finance through the commissioner a tax ~~[of .25 per cent]~~ on gross premiums ~~[for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable]~~ on or before March 1 of each year[;

(b) ~~Each captive insurance company chartered in this State as other than a pure captive insurance company shall pay a tax of one per cent on gross premiums for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 1 of each year.], as follows:~~

- (1) .25 per cent on \$0 to \$25,000,000 of gross premiums for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted;
- (2) .15 per cent on more than \$25,000,000, to \$50,000,000 of gross premiums for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted; and
- (3) .05 per cent on more than \$50,000,000 of gross premiums for insurance written on all risks or property resident, situated, or located within this

State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted.

[(e)] (b) The tax imposed by this section [~~when paid~~] shall be in settlement of and in lieu of all demands for taxes of every character imposed by the laws of this State, the ordinances or other laws, or rules of any county of this State, except taxes on real property and taxes on the purchase, use, or ownership of tangible personal property.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall take effect on January 1, 2003.

(Approved June 25, 2002.)

## ACT 207

H.B. NO. 2045

A Bill for an Act Relating to Revenue Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 49-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “board” to read:

““Board” means any department, corporation, or board of a county authorized to issue revenue bonds under this chapter.”

2. By amending the definition of “county” to read:

““County” means [the]:

(1) The city and county of Honolulu and the counties of Hawaii, Kauai, and Maui[-the];

(2) The board of water supply of the city and county of Honolulu and the boards of water supply of the counties of Hawaii, Kauai, and Maui[-];  
or

(3) For a county with a current resident population under one hundred thousand:

(A) Any corporation established by a county ordinance, resolution, or charter as a public body corporate and politic and instrumentality and agency of the county for the purpose of owning or operating facilities for the furnishing of electricity; or

(B) Any board of a county that owns or operates facilities for the furnishing of electricity;

provided that the corporation or board direct all of its revenues toward the furnishing of electrical services, and not toward the general fund of the county, unless the transfer of revenues constitutes a payment in lieu of taxes.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval provided that:

(1) Section 1 of this Act shall be repealed on June 30, 2004; and

- (2) Section 49-1, Hawaii Revised Statutes, as it pertains to the definitions of “board” and “county”, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 26, 2002.)

**ACT 208**

H.B. NO. 536

A Bill for an Act Relating to Community Development.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there is a need to clarify the language of section 206E-8.5, Hawaii Revised Statutes, pertaining to review and approval of special management area permits and shoreline setback variances in community development districts.

The purposes of this Act are to allow the counties to continue administering special management area permits and shoreline setback variances in community development districts until such time as a community development plan is developed and approved in accordance with section 206E-5, Hawaii Revised Statutes, and to repeal the Hamakua community development district statute.

SECTION 2. Section 206E-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows.

“(a) Notwithstanding chapter 205A, all requests for developments within a special management area and shoreline setback variances for developments on any lands within a community development district, for which a community development plan has been developed and approved in accordance with section 206E-5, shall be submitted to and reviewed by the lead agency as defined in chapter 205A. In community development districts for which a community development plan has not been developed and approved in accordance with section 206E-5, parts II and III of chapter 205A shall continue to be administered by the applicable county authority until a community development plan for the district takes effect.”

SECTION 3. Chapter 206E, part V, Hawaii Revised Statutes, is repealed.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

**ACT 209**

H.B. NO. 1684

A Bill for an Act Relating to State and Local Taxation of Mobile Telecommunications Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to enact statutory provisions to conform to the federal Mobile Telecommunications Sourcing Act, P.L. 106-252 (July 28, 2000), which takes effect on August 1, 2002. In 2000, the United States

Congress passed the Mobile Telecommunications Sourcing Act, which mandates a new method of sourcing the income received by home service providers. "Home service provider" is a term of art used to describe wireless telecommunications companies, including Verizon Wireless, AT&T Wireless, and Sprint PCS. Members of the wireless telecommunications industry and the Federation of Tax Administrators (representing the states) worked closely with Congress on these new sourcing rules. These federal sourcing rules were enacted to simplify tax reporting for home service providers. In adopting the Mobile Telecommunications Sourcing Act under Hawaii's tax laws, the representatives of the department of taxation, the wireless telecommunications industry, and other interested parties met in May of 2001. This Act is the result of those discussions.

Under most states' laws, a state may tax interstate telecommunications if the call either originates or terminates in that state and if the call is charged to a service address in that state. *Goldberg v. Sweet*, 488 U.S. 252 (1989). The *Goldberg* method, however, is not easily applied to wireless telecommunications because of the difficulty in identifying the precise location from which a call is placed or in which it terminates. For example, a wireless phone would allow a Hawaii resident driving through California to place a call to someone in Oklahoma and continue to drive into Nevada while still on the call. In this instance, the call originated in both California and Nevada and terminated in Oklahoma, but the Hawaii resident will probably be billed in Hawaii for the call. Thus, *Goldberg* is not instructive for the home service provider or the Hawaii resident (the customer) who must establish which state's taxes should apply to the call.

Under the Mobile Telecommunications Sourcing Act, all wireless calls are sourced to the subscriber's residential or primary business street address, whichever is the place of primary use. The Mobile Telecommunications Sourcing Act has developed a uniform method of sourcing wireless services for all states (and local governments within each state which constitute separate taxing jurisdictions). The wireless telecommunications industry and its customers can now determine where all calls will be taxed by simply determining the customer's place of primary use. This Act does not impose a new tax burden on the wireless telecommunications industry or its subscribers.

Under this Act, the sourcing rules will become effective on July 1, 2002, and apply to gross income received after August 1, 2002, to correspond to the effective date of the federal Mobile Telecommunications Sourcing Act.

To simplify filing and reporting for home service providers, this Act also exempts from both the general excise tax and public service company tax wholesale sales of mobile telecommunication services made between home service providers. These sales occur when a home service provider's customer places a phone call to or from an area for which the home service provider does not have a license (granted by the Federal Communication Commission) to operate. In those cases, the home service provider must purchase mobile telecommunications service from another home service provider (referred to as a "serving carrier") who does hold a license for that particular area. The income from these sales would normally be included in the gross income of a home service provider, but this Act exempts such income on a going-forward basis.

SECTION 2. Chapter 239, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . SOURCING OF  
MOBILE TELECOMMUNICATIONS SERVICES INCOME**

**§239-A Application.** Sections 239-A to 239-E shall apply to home service providers as defined in section 239-B.

**§239-B Definitions.** As used in sections 239-A to 239-E:

“Charges for mobile telecommunications services” means any charge for, or associated with, the provision of commercial mobile radio service, as defined in title 47 Code of Federal Regulations section 20.3 as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer’s home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

“Customer” means:

- (1) The person or entity that contracts with the home service provider for mobile telecommunications services; or
- (2) If the end user of mobile telecommunications services is not the contracting party, “customer” means the end user of the mobile telecommunications service; provided that this paragraph shall apply only for the purpose of determining the place of primary use. Without implication for the general definition of “customer”, the term does not include:
  - (A) A reseller of mobile telecommunications service; or
  - (B) A serving carrier under an arrangement to serve the customer outside the home service provider’s licensed service area.

“Home service provider” means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

“Licensed service area” means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

“Mobile telecommunications service” means commercial mobile radio service, as defined in title 47 Code of Federal Regulations section 20.3 as in effect on June 1, 1999.

“Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, which must be:

- (1) The residential street address or the primary business street address of the customer; and
- (2) Within the licensed service area of the home service provider.

“Prepaid telephone calling service” means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

“Reseller”:

- (1) Means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and
- (2) Does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

“Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed service area.

“Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city,



county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

**§239-C Mobile telecommunications definitions.** The definitions relating to mobile telecommunications services set forth under section 239-B shall apply to give effect to the federal Mobile Telecommunications Sourcing Act, title 4 United State Code sections 116 to 126, and shall have no impact on the interpretation of the laws of this State except as expressly set forth in this chapter.

**§239-D Effect of customer's failure to provide its place of primary use; effect of aggregation or segregation of charges.** (a) Nothing in this chapter modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

(b) If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.

(c) If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

(d) A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. Subject to a determination by the department that the customer's place of primary use does not reflect the correct taxing jurisdiction, and if the home service provider's reliance on information provided by its customer is in good faith, a home service provider may rely on the applicable residential or business street address supplied by the customer and the home service provider shall not be held liable for any additional taxes, charges, or fees that are passed on to the customer as a separate itemized charge; provided that a home service provider may treat the address used by the home service provider for tax purposes under a service contract or agreement in effect on July 28, 2002, as the customer's place of primary use for the remaining term of the contract or agreement, excluding any renewal of the contract or agreement.

**§239-E Nonseverability.** If a court of competent jurisdiction enters a final judgment on the merits that:

- (1) Is based on federal law;
- (2) Is no longer subject to appeal; and
- (3) Substantially limits or impairs the essential elements of sections 239-A to 239-D,

then sections 239-A to 239-D are invalid and have no legal effect as of the date of entry of the judgment."

SECTION 3. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

**“§237-13 Imposition of tax.** There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

- (1) Tax on manufacturers.
  - (A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.
  - (B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
  - (C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:
    - (i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;
    - (ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of

- similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;
- (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and
  - (iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.
- (2) Tax on business of selling tangible personal property; producing.
- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as certain retailing is taxed by section 237-16, the tax shall be that levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business; provided that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).
  - (B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.
  - (C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.

- (D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.
- (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.
- (F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
  - (i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and
  - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.
- (3) Tax upon contractors.
  - (A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided that insofar as the business of contracting is taxed by section 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.
  - (B) In computing the tax levied under this paragraph or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A) or section 237-16, on:
    - (i) Another taxpayer who is a contractor, as defined in section 237-6;
    - (ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or
    - (iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-

9, but who performs contracting activities on federal military installations and nowhere else in this State; provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.

- (C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:
    - (i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and
    - (ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.
  - (D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.
- (4) Tax upon theaters, amusements, radio broadcasting stations, etc.

- (A) Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business, and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.
- (B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
  - (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
  - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.
- (5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.
- (6) Tax on service business.
  - (A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.
  - (B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
    - (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
    - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.
  - (C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and

the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent. Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.

(D) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.

(E) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when such services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services which are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-D, shall be apportioned under any apportionment factor or formula adopted under section 237-13(6)(D). Gross income shall not include:

- (i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;
- (ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;
- (iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and
- (iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use",

and “serving carrier” have the same meaning as in section 239-B.

- (7) Tax on insurance solicitors and agents. Upon every person engaged as a licensed solicitor, general agent, or subagent pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to .15 per cent of the commissions due to that activity.
- (8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer’s legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer’s return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.
- (9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted.”

SECTION 4. Section 239-2, Hawaii Revised Statutes, is amended by amending the definition of “gross income” to read as follows:

““Gross income” means the gross income from public service company business as follows:

- [(A)] (1) Gross income from the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil;
- [(B)] (2) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages[;] other than mobile telecommunications services, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:
  - [(i)] (A) Originating and terminating within this State;
  - [(ii)] (B) By means of vessels or aircraft having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected; or
  - [(iii)] (C) By means of plant or equipment located in the State, between points in the State; or
- [(C)] (3) Gross income from the transportation of freight by motor carriers (other than as stated in [subparagraph (B)]; paragraph (2)), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in [subparagraph (B)]; paragraph (2) or (4)); or



- (4) With respect to a home service provider of mobile telecommunications services, "gross income" includes charges billed for mobile telecommunications services provided by a home service provider to a customer with a place of primary use in this State when the mobile telecommunications services originate and terminate within the same state; provided that all such charges for mobile telecommunications services that are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. Gross income shall not include:

- (A) Any charges for or receipts from mobile telecommunications services provided to customers of the home service provider whose place of primary use is outside this State;
- (B) Any receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer; and
- (C) Any receipts specifically from interstate or foreign mobile telecommunications services taxable under section 237-13(6)(E), as determined by the home service provider's books and records kept in the ordinary course of business.

For the purposes of this paragraph, "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-B.

The words "gross income" and "gross income from public service company business" shall not be construed to include dividends (as defined by [chapter 235] section 235-1) paid by one member of an affiliated public service company group to another member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one member of an affiliated public service company group to another member of the same group. "Affiliated public service company group" means an affiliated group of domestic corporations within the meaning of chapter 235, all of the members of which are public service companies. "Member of an affiliated public service company group" means a corporation (including the parent corporation) which is included within an affiliated public service company group.

Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carriers' respective portion of the proceeds.

Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, any tax imposed by this chapter shall apply to each person with respect to each person's respective portion of the proceeds.

Accounts found to be worthless and actually charged off for income tax purposes, at corresponding periods, may be deducted from gross income as specified under this chapter so far as they reflect taxable sales, but shall be added to gross income when and if subsequently collected.

As used in this paragraph "tourism related services" means motor carriers of passengers regulated by the public utilities commission."

SECTION 5. Chapter 239, Hawaii Revised Statutes, is amended by designating sections 239-1 to 239-13, Hawaii Revised Statutes, as:

**“PART I. GENERAL PROVISIONS”**

SECTION 6. Notwithstanding any provisions of this Act to the contrary, nothing in this Act shall affect or shall be construed to affect the taxation of prepaid telephone calling service under section 237-13.8, Hawaii Revised Statutes.

SECTION 7. In codifying the new sections added by section 2 of this Act and referred to in this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval; provided that sections 2, 3, and 4 of this Act with respect to tax liabilities shall apply only to charges on or revenues from customer bills issued after August 1, 2002.

(Approved June 28, 2002.)

**ACT 210**

H.B. NO. 1700

A Bill for an Act Relating to Insurance Policies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:10D-107, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The minimum values as specified in subsections (e), (f), (g), (h), and (j) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection.

- (1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of three per cent per annum of percentages of the net considerations paid prior to that time, decreased by the sum of:

- (A) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent per annum; and
- (B) The amount of any indebtedness to the company on the contract, including interest due and accrued and increased by any existing additional amounts credited by the insurer to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent of the net consideration for the first contract year and eighty-seven and one-half per cent of the net considerations for the second and later contract years. Notwithstanding the

provisions of the preceding sentence, the percentage shall be sixty-five per cent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per cent.

- (2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:
  - (A) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent of the net consideration for the first contract year plus twenty-two and one-half per cent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.
  - (B) The annual contract charge shall be the lesser of \$30 or ten per cent of the gross annual consideration.
- (3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety per cent and the net consideration shall be the gross consideration less a contract charge of \$75.

Notwithstanding any other provision of this section, for any contract issued after June 30, 2002, and before July 1, 2004, the interest rate at which net considerations, prior withdrawals, and partial surrenders shall be accumulated, for the purpose of determining minimum nonforfeiture amounts, shall be one and one-half per cent."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 28, 2002.)

## ACT 211

H.B. NO. 2018

A Bill for an Act Relating to Agricultural Leases.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. As state agricultural leases near expiration, it becomes increasingly difficult for the lessees to prepare business plans due to the uncertainty of whether they will be able to successfully rebid at auction. This predicament may discourage lessees from making improvements to the leased premises or investments in the business, restrict a lessee's ability to finance improvements, reduce operating efficiencies, and deny the State of a fully productive agricultural operation.

While some lessees may extend their leases to the extent necessary to qualify for a mortgage or loan pursuant to section 171-36(b), Hawaii Revised Statutes, others may elect not to do so.

The legislature finds that these agricultural lessees should be provided an opportunity to determine at an earlier date prior to lease expiration whether they will

be able to retain the property for a longer term. The establishment of an early re-auction process would achieve this objective.

The legislature further finds that any re-auction process must also conform to the fundamental principles of the public land laws which prescribe making public lands available to the highest bidder at auction through a fair and open process.

The purpose of this Act is to authorize the department of land and natural resources to mutually cancel agricultural leases nearing expiration and to re-lease the lands by public auction.

SECTION 2. (a) Any qualified lessee of an agricultural lease may apply to the department of land and natural resources to re-auction the lease; provided that the lease has run at least thirty years and has less than five years remaining on the lease term. Upon receipt of the application and the written consent of any person or entity with an interest in, or subordinate to, the lease, the department may re-auction the agricultural lease; provided that any re-auction shall be in accordance with sections 171-14, 171-14.5, 171-16, and 171-17, Hawaii Revised Statutes; provided further that the board of land and natural resources:

- (1) May reject any application for re-auction upon a determination that the lands under lease can be used for a public purpose or for a higher and better or otherwise more appropriate use;
- (2) May establish qualification criteria and requirements for qualified lessees in addition to those contained in this section; and
- (3) Shall require the qualified lessee to sign an agreement prior to the issuance of any re-auction notice that includes provisions specifying that:
  - (a) The existing lease shall be canceled at the conclusion of the re-auction; and
  - (b) The lessee shall indemnify the State from any and all claims, lawsuits, or damages resulting from the early termination of the existing lease.

(b) For purposes of this section, "qualified lessee" means a lessee who is not in default of the terms and conditions of the existing lease and who has fully utilized the premises for the intended agricultural use under the existing lease.

SECTION 3. This Act shall take effect upon its approval and shall be repealed on July 1, 2007.

(Approved June 28, 2002.)

## ACT 212

H.B. NO. 2163

A Bill for an Act Relating to Rehiring Retired Teachers in the Department of Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 308, Session Laws of Hawaii 2001, is amended by amending section 2 to read as follows:

"SECTION 2. Beginning July 1, 2001, the department of education may employ retired teachers at up to one hundred per cent full-time equivalents in teacher shortage areas identified by the department of education and to serve as mentors for new classroom teachers with the prior approval of the superintendent of education, and pursuant to collective bargaining agreements. The provisions of sections 88-21,

88-42.5, 88-43, 88-45, and 88-46, Hawaii Revised Statutes, and any other statute to the contrary notwithstanding, retired teachers who are hired under this section shall not earn retirement service credit, contribute to the retirement system, or gain additional retirement system benefits as a result of their employment; provided that the retired teachers shall continue to receive entitled normal retirement benefits without penalty. To qualify for full-time employment, the teacher shall be retired for [two] at least one calendar [years:] year. A retired teacher may qualify for mentoring immediately upon retirement.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved June 28, 2002.)

## **ACT 213**

H.B. NO. 2164

A Bill for an Act Relating to the Hawaii Educator Loan Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The National Commission on Teaching and America’s Future, a national organization with nineteen partner states, including Hawaii, is focused on improving student learning by ensuring that there is a caring, competent, and qualified teacher in every classroom.

Over the past year, with the lieutenant governor as its chairperson, the Hawaii Policy Group of the National Commission on Teaching and America’s Future, composed of a representative group of educational stakeholders, has collaborated on research-based recommendations to improve teaching in Hawaii.

One thing was clear: Aside from home and societal factors, teacher quality is, without a question, the most influential factor in student achievement. Standards-based reform has a greater chance of success when teacher quality is addressed and given the highest priority. The legislature finds that teachers must have the resources and skills necessary to ensure that all students attain their full potential.

The major recommendations of this group encompass five key areas:

- (1) Establishing and implementing standards for students and teachers;
- (2) Ensuring teacher preparation and professional development;
- (3) Recruiting and placing qualified teachers in all classrooms;
- (4) Encouraging and rewarding teaching knowledge and skill; and
- (5) Creating schools that are organized for student and teacher success.

In 2001, the Hawaii educator loan program and special fund were established to recruit college students to become educators and to ensure that these graduates teach in our public schools. One group that has expressed its support for this program and efforts in general to improve the teacher pool in Hawaii has been the students who participate in the Hawaii State Student Council (Council) and the Hawaii State Student Conference (Conference). The Council consists of students from throughout the State who come together to discuss issues of statewide importance to students in Hawaii’s schools. The Conference is an annual event at which students from throughout the State convene to discuss issues of importance and to determine the group’s agenda for reform efforts in education, including proposed legislation to be considered by the legislature.

These students know better than anyone in the State how crucial it is to have a well-trained local pool of teachers and understand the detrimental effects of an inadequate supply of qualified teachers. They recognize the benefits of this program, which encourages teachers to receive their education degrees here in Hawaii and remain here to teach when they graduate.

The purpose of this Act is to amend the provisions of the Hawaii educator loan program and special fund by:

- (1) Reducing the loan forgiveness period from ten years to six years. The legislature finds that ten years is simply too long to expect teachers to wait for forgiveness of their educational loans;
- (2) Specifying that the new six-year schedule forgives ten per cent of the loan amount each year for the first five years that the individual is employed as a full-time teacher in the Hawaii public school system and the remaining fifty per cent for the sixth year;
- (3) Providing that moneys remaining in the fund at the end of each fiscal year shall remain in the special fund and not revert to the general fund;
- (4) Authorizing the expenditure of up to five per cent of the total amount of outstanding loans for the purposes of administrative costs for the special fund;
- (5) Exempting the university from the public notice and public hearing requirements for adopting rules under chapter 91, Hawaii Revised Statutes, to expedite the implementation of the program; and
- (6) Allowing collection agencies who enter into contracts with the University of Hawaii to collect delinquent loans from students to pass its fees on to the debtors.

SECTION 2. Section 304-20.6, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) There is created in the treasury of the State, the Hawaii educator loan program special fund, for the purpose of providing loans pursuant to subsection (a). All loans made under this section shall bear interest at five per cent simple interest. Repayment of principal and interest charges shall commence one year after graduation or three months after a borrower ceases to be enrolled in the state-approved teacher education program and shall be paid in periodic installments within a ~~ten-year~~ six-year period. The university may charge late fees and all other reasonable costs for the collection of delinquent loans. ~~[AH] The following may be deposited into the special fund: appropriations made by the legislature, private contributions, repayment of loans, including interest and payments received on account of principal [shall be credited to the special fund.], and moneys from other sources; provided that:~~

- (1) Moneys on balance in the special fund at the close of each fiscal year shall remain in that fund and shall not lapse to the credit of the general fund; and
- (2) An amount from the special fund not exceeding five per cent of the total amount of outstanding loans may be set by the university to be used for administrative expenses incurred in administering the special fund.

The university may adopt rules to implement the Hawaii educator loan program. The rules shall be adopted pursuant to chapter 91 but shall be exempt from the public notice and public hearing requirements.

(c) Upon a showing of proof that the individual has completed a state-approved teacher education program and is employed as a full-time teacher in the Hawaii public school system, one-tenth of the total amount of the loan and interest shall be waived for every year of the first five years, and the remaining balance shall be waived after the sixth year that a loan recipient teaches in a Hawaii public school

in a hard-to-fill position as determined by the superintendent of education, including special education, regular education shortage categories, or Title 1 schools, and in one of the following capacities:

- (1) As an elementary school teacher teaching in the field of elementary education who has met standards as set forth by the Hawaii teacher standards board; or
- (2) As a secondary school teacher teaching in the subject area that is relevant to the loan recipient's academic major as certified by the department of education who has met standards as set forth by the Hawaii teacher standards board.

Liability for repayment of a loan shall be canceled upon the death or permanent total disability of the borrower."

SECTION 3. Section 443B-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This section shall not prohibit a collection agency from collecting, or attempting to collect, from a debtor, a commission authorized under a contract with the University of Hawaii [~~pursuant to section 304-93(b)~~], or a contract with the department of taxation pursuant to sections 231-13 and 231-26."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

## ACT 214

H.B. NO. 2468

A Bill for an Act Relating to Cemetery and Funeral Trusts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§441- Retaining consultants.** (a) The director may retain private consultants, by contract or otherwise, as determined by the director, in connection with the review of filings required of cemetery authorities, pre-need funeral authorities, or applicants under this chapter. Except as limited under subsection (c) below, the cost of contracting private consultants shall be borne by the cemetery authority, pre-need funeral authority, or applicant making the filing.

(b) The consultant shall perform all tasks as directed by the director under subsection (a), including but not limited to:

- (1) Reviewing the filing, in whole or in part, including documentation and other provided materials, for the purpose of examining its compliance with the requirements of this chapter, rules adopted by the director pursuant to this chapter, and other applicable laws; and
- (2) Providing to the director a written analysis of the filing upon completing the review, including an opinion of the nature and extent to which there is compliance with this chapter, rules adopted by the director pursuant to this chapter, and other applicable laws.

(c) Without the written consent of the cemetery authority, pre-need funeral authority, or applicant making the filing, the cost to be borne by a cemetery authority, pre-need funeral authority, or applicant for a filing under this chapter shall not exceed \$25,000; provided that in the event the cost reaches \$25,000 and prior to any consultant continuing with the review, the cemetery authority, pre-need funeral authority, or applicant making the filing shall:

- (1) Provide written consent to exceed the \$25,000 fee;
- (2) Withdraw the filing; or
- (3) Except in the case of an incomplete filing, receive a denial or refusal by the director to approve the filing.

By providing the written consent described in subsection (c)(1), the cemetery authority, pre-need funeral authority or applicant making the filing shall not be deemed to have waived any rights it may have under chapters 91 and 436B should the director subsequently deny or refuse to approve the filing.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 215**

H.B. NO. 2525

A Bill for an Act Relating to Public Works Projects.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to ensure that when contractors bid on public works construction projects, it is done pursuant to standards that are fair, equitable, and uniformly applied. The intent of this Act is to clarify, but not change, existing law.

SECTION 2. Chapter 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§103- Wages and hours of employees on public works construction contracts.** (a) Before any bidder or offeror enters into a contract for construction of a public work project in excess of \$2,000, which is subject to chapter 104, the bidder or offeror shall affirm the bidder’s or offeror’s intent to comply with the requirements of chapter 104 by certifying that:

- (1) Individuals engaged in the performance of the contract on the job site shall be paid:
  - (A) Not less than the wages that the director of labor and industrial relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects; and
  - (B) Overtime compensation at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day; and



(2) All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

(b) No contract for construction of any public work project in excess of \$2,000 shall be granted unless all the conditions of this section are met.

(c) It shall be the duty of the governmental contracting agency awarding the contract for construction of a public work project in excess of \$2,000 to enforce this section."

SECTION 3. Section 104-2, Hawaii Revised Statutes, is amended to read as follows:

**"§104-2 [Rate of wages for laborers and mechanics; contract and specification provisions.] Applicability; wages, hours, and other requirements.** (a) ~~[Except as otherwise provided, the specifications of every contract in excess of \$2,000 to which a governmental contracting agency is a party, for construction of any public work, shall state the minimum wages that shall be paid to the various classes of laborers and mechanics engaged in the performance of the contract on the job site, and that the minimum wages shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the director of labor and industrial relations; provided that this subsection shall be applied individually and on a case by case basis to each public work project, including development of housing under section 46-15 or chapter 201G, for which a contract is required under this section, and that specific terms of each contract shall be mutually exclusive of the terms of any other public work contract; and provided further that this subsection shall not apply to]~~ This chapter shall apply to every contract in excess of \$2,000 for construction of a public work project to which a governmental contracting agency is a party; provided that this chapter shall not apply to experimental and demonstration housing developed pursuant to section 46-15 or housing developed pursuant to chapter 201G if the cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

For the purposes of this subsection:

"Contract" includes but is not limited to any agreement, purchase order, or voucher in excess of \$2,000 for construction of a public work project.

"Governmental contracting agency" includes any person or entity that causes either directly or indirectly the building or development of a public work.

"Party" includes eligible bidders for and eligible developers of any public work and any housing under chapter 201G; provided that this subsection shall not apply to any housing developed under section 46-15 or chapter 201G if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

"Public work" means any project, including development of any housing pursuant to section 46-15 or chapter 201G, and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived either directly or indirectly from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes.

(b) Every laborer and mechanic performing work on the job site for the construction of any public work project shall be paid no less than prevailing wages; provided that:

(1) The [minimum] prevailing wages shall be not less than the wages that the director of labor and industrial relations, under the rules, shall have

determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State[;];

- (2) The prevailing wages shall be not less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on public works in the State that are prosecuted under contract or agreement with the government of the United States[;]; and
- (3) Notwithstanding the provisions of the original contract, ~~[if the director determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on a public work project shall be raised accordingly.]~~ the prevailing wages shall be periodically adjusted during the performance of the contract in an amount equal to the change in the prevailing wage as periodically determined by the director.

(c) ~~[The contract and specifications shall contain the provision that no]~~ No laborer or mechanic employed on the job site of any public work of the State or any political subdivision thereof shall be permitted or required to work on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the director to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the State.

(d) ~~[Every such contract and the specifications for the contract shall contain (1) a provision that the]~~ The contractor or the contractor's subcontractor shall pay all mechanics and laborers employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five working days prior to the time of payment, at wage rates not less than those [stated in the contract and specifications,] deemed to be prevailing, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics[; and (2) a provision that the]. The rates of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the job site, and [that] a copy of the rates of wages required to be posted[;] shall be given to each laborer and mechanic employed under the contract by the contractor at the time each laborer and mechanic is employed, [provided] except that where there is a collective bargaining agreement the contractor does not have to provide the contractor's employees the wage rate schedules.

(e) ~~[Every such contract and the specifications for such contract shall contain a provision that the]~~ The governmental contracting agency may withhold from the contractor so much of the accrued payments as the governmental contracting agency may consider necessary to pay to the laborers and mechanics employed by the contractor or any subcontractor on the job site the difference between the prevailing wages [required by the contract or specifications] and the wages received and not refunded by the laborers and mechanics.

(f) Every contract in excess of \$2,000 for construction of a public work project and the specifications for such contract shall include provisions that set forth the requirements of subsections (a) to (e); provided that failure by the contracting agency to include those provisions in the contract or specifications shall not be a defense of the contractor or subcontractor for noncompliance with the requirements of this chapter."

SECTION 4. Section 104-34, Hawaii Revised Statutes, is amended to read as follows:

**“§104-34 Submission of collective bargaining agreement to the director.**

(a) Parties to a collective bargaining agreement covering classes of laborers or mechanics, which are included in the prevailing wage determinations made pursuant to this chapter, shall submit a copy of the agreement to the director within five days after execution of the agreement. [The]

(b) Except as otherwise provided herein, the terms of agreement shall be kept confidential by the director [upon the request of the parties to the collective bargaining agreement and shall be used only pursuant to this chapter]. The director may disclose terms of the agreement to any federal or state agency for the purpose of enforcing this chapter.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 216**

H.B. NO. 2527

A Bill for an Act Relating to Safety Inspection Frequencies for Regulated Equipment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to provide for increased public safety and better customer service by allowing the department of labor and industrial relations to set reinspection frequencies of boilers and pressure systems based on safety considerations.

SECTION 2. Section 397-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Administration.

- (1) The department shall establish a boiler and elevator inspection branch for the enforcement of the rules adopted under this chapter and other duties as assigned;
- (2) The department shall:
  - (A) Implement and enforce the requirements of this chapter; and
  - (B) Keep adequate and complete records of the type, size, location, identification data, and inspection findings for boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter;
- (3) The department shall formulate definitions and adopt and enforce standards and rules pursuant to chapter 91 that may be necessary for carrying out this chapter. Definitions and rules adopted in accordance with chapter 91 under the authority of chapter 396, prior to the adoption of this chapter that pertain to boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter, shall be continued in force under the authority of this chapter;

- (4) Emergency temporary standards may be adopted without conforming to chapter 91 and without hearings to take immediate effect upon giving public notice of the emergency temporary standards or upon another date that may be specified in the notice. An emergency temporary standard may be adopted, if the director determines:
  - (A) That the public or individuals are exposed to grave danger from exposure to hazardous conditions or circumstances; and
  - (B) That the emergency temporary standard is necessary to protect the public or individuals from danger.Emergency temporary standards shall be effective until superseded by a standard adopted under chapter 91, but in any case shall be effective no longer than six months;
- (5) Variances from standards adopted under this chapter may be granted upon application of an owner, user, contractor, or vendor. Application for variances shall correspond to procedures set forth in the rules adopted pursuant to this chapter. The director may issue an order for variance, if the director determines that the proponent of the variance has demonstrated that the conditions, practices, means, methods, operations, or processes used or proposed to be used will provide substantially equivalent safety as that provided by the standards;
- (6) Permits.
  - (A) The department shall issue a "permit to operate" regarding any boiler, pressure system, amusement ride, or elevator and kindred equipment if found to be safe in accordance with rules adopted pursuant to chapter 91;
  - (B) The department may immediately revoke any "permit to operate" of any boiler, pressure system, amusement ride, or elevator and kindred equipment found to be in an unsafe condition or where a user, owner, or contractor ignores prior department orders to correct specific defects or hazards and continues to use or operate the above mentioned apparatus without abating the hazards or defects;
  - (C) The department shall reissue a "permit to operate" to any user, owner, or contractor who demonstrates that the user, owner, or contractor is proceeding in good faith to abate all nonconforming conditions mentioned in department orders and the boilers, pressure systems, amusement rides, and elevators and kindred equipment are safe to operate; and
  - (D) The department shall establish criteria for the periodic reinspection and renewal of the permits to operate, and may provide for the issuance of temporary permits to operate while any noncomplying boiler, pressure system, amusement ride, and elevator and kindred equipment are being brought into full compliance with the applicable standards and rules adopted pursuant to this chapter; provided that ~~[effective July 1, 2000,]~~ the period between an initial safety inspection or the inspection used as a basis for the issuance of a permit to operate, and any subsequent inspection of ~~[a boiler or pressure system]~~ elevators and kindred equipment shall not exceed ~~[thirteen months, and shall not exceed eight months for elevators and kindred equipment;]~~ one year;
- (7) No boiler, pressure system, amusement ride, or elevator and kindred equipment which are required to be inspected by this chapter or by any rule adopted pursuant to this chapter shall be operated, except as

- necessary to install, repair, or test, unless a permit to operate has been authorized or issued by [{}the{}] department and remains valid; and
- (8) The department, upon the application of any owner or user or other person affected thereby, may grant time that may reasonably be necessary for compliance with any order. Any person affected by an order may for cause petition the department for an extension of time."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

## ACT 217

S.B. NO. 2180

A Bill for an Act Relating to Genetic Information and Genetic Testing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 378-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

"“Being regarded as having such an impairment” includes but is not limited to employer consideration of an individual’s genetic information, including genetic information of any family member of an individual, or the individual’s refusal to submit to a genetic test as a condition of initial or continued employment.

"Family member” means, with respect to a certain individual, another individual related by blood to that individual.

"Genetic information” means information about genes, gene products, hereditary susceptibility to disease, or inherited characteristics that may derive from the individual or family member.

"Genetic test” means a laboratory test which is generally accepted in the scientific and medical communities for the determination of the presence or absence of genetic information.”

SECTION 2. Chapter 431, article 10A, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

**“§431:10A- Genetic information nondiscrimination in extended health insurance coverage.** (a) No insurer may:

- (1) Use an individual’s or a family member’s genetic information, or request for genetic services, to deny or limit any coverage or establish eligibility, continuation, enrollment, or premium payments;
- (2) Request or require collection or disclosure of an individual’s or a family member’s genetic information; or
- (3) Disclose an individual’s or a family member’s genetic information without the written consent of the person affected, the person’s legal guardian, or a person with power of attorney for health care for the person affected. This consent shall be required for each disclosure and shall include the name of each person or organization to whom the disclosure will be made.

(b) As used in this section:

“Family member” means, with respect to the individual, another individual related by blood to that individual.

“Genetic information” means information about genes, gene products, hereditary susceptibility to disease, or inherited characteristics that may derive from the individual or family member.

“Genetic services” means health services to obtain, assess, or interpret genetic information for diagnosis, therapy, or genetic counseling.

(c) This section shall not apply to any action taken in connection with policies of life insurance, disability income insurance, and long-term care insurance delivered or issued for delivery in this State.”

SECTION 3. Chapter 432, article 2, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§432:2- Genetic information nondiscrimination in health insurance coverage.** (a) No fraternal benefit society may:

- (1) Use an individual’s or a family member’s genetic information, or request for genetic services, to deny or limit any coverage or establish eligibility, continuation, enrollment, or premium payments;
- (2) Request or require collection or disclosure of an individual’s or a family member’s genetic information; or
- (3) Disclose an individual’s or a family member’s genetic information without the written consent of the person affected, the person’s legal guardian, or a person with power of attorney for health care for the person affected. This consent shall be required for each disclosure and shall include the name of each person or organization to whom the disclosure will be made.

(b) As used in this section:

“Family member” means, with respect to the individual, another individual related by blood to that individual.

“Genetic information” means information about genes, gene products, hereditary susceptibility to disease, or inherited characteristics that may derive from the individual or family member.

“Genetic services” means health services to obtain, assess, or interpret genetic information for diagnosis, therapy, or genetic counseling.

(c) This section shall not apply to any action taken in connection with policies of life insurance, disability income insurance, and long-term care insurance delivered or issued for delivery in this State.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Kaho'olawe Island Reserve.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1994, the United States enacted a law requiring the conveyance of the island of Kaho'olawe to the State, the removal of unexploded ordnance, and environmental restoration of the island. Kaho'olawe was placed under federal receivership to clear the ordnance, and the legislature consequently formed the Kaho'olawe island reserve commission to manage the island and its surrounding waters on behalf of the State. The Kaho'olawe island reserve commission entered into an agreement with the United States Navy regarding the terms and scope of the unexploded ordnance removal and environmental restoration project. However, the United States Navy has informed the State that the unexploded ordnance removal and environmental restoration project will not be completed to previously agreed-upon standards before the congressionally-mandated project sunsets in November 2003, when control of access to the island is transferred to the State.

Kaho'olawe and its surrounding waters still contain hazards from residual unexploded ordnance. Persons accessing Kaho'olawe and its surrounding waters will be exposed to these hazardous conditions. The legislature finds that in advance of the 2003 transfer, it is necessary to put measures in place that establish a balance between public access and use of Kaho'olawe, and the government's interest in, and responsibility for public safety.

The purpose of this Act is to establish a process by which the State provides meaningful warnings to the public regarding the ordnance hazards of Kaho'olawe. Under this process, the State is protected from liability if it has provided the public with adequate warning of the ordnance on and around the island through the design and placement of warning signs or devices. The legislature believes this Act will allow a warning system to be developed for Kaho'olawe and its surrounding waters that will increase public safety and reduce the potential for unexploded ordnance-related accidents.

SECTION 2. Chapter 662, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§662- Conclusive presumptions; unexploded ordnance on Kaho'olawe and in the ocean adjacent to Kaho'olawe.** (a) The State shall have a duty to warn persons who enter the Kaho'olawe island reserve specifically of the dangers posed by unexploded ordnance on the island or in the adjacent ocean.

(b) A sign, signs, or other device warning of the dangers posed by unexploded ordnance on the island or in the adjacent ocean shall be conclusively presumed to be legally adequate to warn of those dangers if:

- (1) The State posts the sign, signs, or other device on the island; and
- (2) The design and placement of the sign, signs, or other device is approved by the Kaho'olawe island reserve commission.

(c) Prior to approving the design and placement of a warning sign, signs, or device under this section, the Kaho'olawe island reserve commission shall:

- (1) Consider the needs of the public to be warned of the dangers posed by unexploded ordnances on the island and in its adjacent ocean; and
- (2) Consult the task force on warning signs and devices for the Kaho'olawe island reserve.

The Kaho'olawe island reserve commission may seek the advice of the United States Navy or other agency of the United States of America with respect to the appropriate

design of warning signs or devices and their placement. The Kaho'olawe island reserve commission may require warning signs or devices in addition to the signage before approving the design and placement of a warning sign or device.

(d) Approval of the design and placement of a warning sign or device under this section shall be a discretionary function under section 662-15(1).

(e) If a warning sign or device posted or established in accordance with this section is vandalized, otherwise removed, or made illegible, the conclusive presumption provided by subsection (b) shall continue for a period of ten days from the date that the vandalism, removal, or illegibility is discovered by the State. The Kaho'olawe island reserve commission shall maintain a record regarding each report of vandalism, removal, or illegibility that results in the replacement of a warning sign or device on the island of Kaho'olawe. The record shall include the date and time of the report and of the replacement of the warning sign or device.

(f) Chapter 91 shall not apply to any action taken, or any procedure followed by the Kaho'olawe island reserve commission pursuant to this section.'

SECTION 3. There is established a task force on warning signs and devices for the Kaho'olawe island reserve, to be administratively attached to the Kaho'olawe island reserve commission. The task force shall provide consultation to the Kaho'olawe island reserve commission regarding the design and placement of warning signs and devices on the island and in the adjacent ocean. The task force shall consist of the following members, who shall serve without compensation:

- (1) The chairperson of the Kaho'olawe island reserve commission, or the chairperson's designated representative;
- (2) The chairperson of the board of land and natural resources, or the chairperson's designated representative; and
- (3) Four persons appointed by the chairperson of the board of land and natural resources knowledgeable in public safety issues pertaining to the dangers existing on the island of Kaho'olawe.

The task force shall be chaired by the chairperson of the Kaho'olawe island reserve commission.

SECTION 4. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that section 2 of this Act shall take effect upon transfer of control of access to Kaho'olawe from the United States Navy to the State of Hawaii.

(Approved June 28, 2002.)

#### Note

1. Edited pursuant to HRS §23G-16.5.



A Bill for an Act Relating to Dental Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 132, Session Laws of Hawaii 2001, is amended by adding a new section to read as follows:

“SECTION 2A. No action brought pursuant to this Act shall abate on account of the subsequent repeal of this Act.”

SECTION 2. Act 132, Session Laws of Hawaii 2001, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval and shall be repealed on ~~[July 1, 2002.]~~ July 1, 2003.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2002.

(Approved June 28, 2002.)

A Bill for an Act Relating to Disaster Relief.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. One of the policies and purposes of chapter 128, Hawaii Revised Statutes, is to ensure that all civil defense functions of the State are coordinated to the maximum extent possible with comparable functions of the federal government, including its various departments and agencies, coordinated with those of other states, localities, and private agencies of every type so that the most effective preparation and use may be made of all personnel, resources, and facilities to deal with any disaster or emergency that may occur. The legislature finds that there is a need to clarify the protections afforded to private agencies and entities engaged in civil defense functions.

Private agencies and entities have always played an integral role in the preparedness of the State. After the tragic attacks upon the United States on September 11, 2001, the nation has been warned to expect the continuation of the war on terrorism and an increased risk of further terrorist attacks upon the United States and around the world. In addition to ongoing preparations and activities relating to natural and man-made disasters and emergencies, the State, counties, federal agencies, military, and private agencies and entities have been coordinating preparations for protection and response, and the development of standard terrorist threat protection conditions and procedures to be used by all participants, in preparing for and responding to potential or actual terrorist threats or attacks.

Pursuant to section 128-6(6), Hawaii Revised Statutes, persons owning, controlling, or operating a public utility or vital facility have been directed to protect and safeguard their property in accordance with established terrorist threat protec-

tion conditions and procedures. In addition to such owners, controllers, or operators, there are other private agencies or entities that are key participants in the civil defense system to ensure that the State is prepared for any type of disaster or emergency.

Currently, the State, counties, and persons engaged in civil defense functions are not liable for death, personal injury, or property damage. However, the law needs to be clarified with respect to the protections afforded to private agencies or entities that are engaged in a civil defense function.

The purpose of this Act is to clarify that the immunities provided under section 128-18, Hawaii Revised Statutes, also apply to private agencies and entities participating in the civil defense system of the State when they are engaged in a civil defense function.

The legislature also finds that there is a need to clarify the law regarding the liability of an innkeeper or hotelkeeper when an innkeeper or hotelkeeper permits the use of property for sheltering persons during disasters and emergencies. The legislature recognizes that there is a shortage of shelter space in Hawaii and that the hotel and visitor industry should be encouraged to assist in the sheltering of visitors to the State during disasters and emergencies.

Under current law, it is unclear whether an innkeeper or hotelkeeper is able to comply fully with the requirements of section 128-19, Hawaii Revised Statutes, when providing shelter to registered guests, because section 128-19 requires that shelter be made available without compensation. This Act also clarifies that compensation received by an innkeeper or hotelkeeper from registered guests is not considered compensation for purposes of section 128-19, Hawaii Revised Statutes.

Finally, this Act also extends immunity for civil and criminal liability to the military and national guard.

SECTION 2. Section 128-18, Hawaii Revised Statutes, is amended to read as follows:

**“§128-18 Immunities; rights. (a) Neither [the]:**

(1) The State [~~nor any~~];

(2) Any political subdivision of the State; [~~nor, except~~]

(3) Any public utility or vital facility;

(4) Private agencies or entities; nor

(5) Except in cases of wilful misconduct, [the] persons engaged in civil defense functions pursuant to this chapter (including volunteers whose services are accepted by any authorized person),

shall be civilly liable for the death of or injury to persons, or [~~for~~] property damage [~~to property~~], as a result of any act or omission in the course of the employment or duties [~~and no~~] under this chapter.

(b) No act or omission shall be imputed to the owner of any vehicle by reason of the owner's ownership thereof; provided that nothing herein shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle which may be insured under section 41D-8 to the extent of the insurance, and unless specifically provided, insurance effected under section 41D-8 shall not include coverage of such risk during a civil defense emergency period. The governor may insure vehicles owned by the State or in the custody and use of the civil defense agency, but insurance effected under section 41D-8 on vehicles used for purposes other than civil defense need not necessarily include coverage of the insured vehicle against the risk incurred or which would be incurred under this chapter as a result of the use of the insured vehicle for civil defense.

(c) Members of the United States army, air force, navy, marines, or coast guard on any duty or service done under or in pursuance of an order or call of the

President of the United States or any proper authority, and the national guard from any other state ordered into service by any proper authority, to assist civil authorities engaged in civil defense functions pursuant to this chapter shall not be liable, civilly or criminally, for any act done or caused by them in pursuance of duty in such service.”

SECTION 3. Section 128-19, Hawaii Revised Statutes, is amended to read as follows:

**“§128-19 Immunity from liability of private shelter.** Any individual, partnership, firm, society, unincorporated association, joint [adventure] venture group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent’s estate, trust, or other legal entity whether doing business for itself or in a fiduciary capacity, owning or controlling real property, who voluntarily and without compensation grants a license or privilege for, or otherwise permits, the designation by the director of civil defense for the use of the whole or any part of the property for the purpose of sheltering persons during an actual, impending, mock or practice attack shall, together with its successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any person or damage to any personal property on the property of the licensor in connection with the use of the licensed premises for the purposes designated. For purposes of this section, the consideration paid by any guest or person for transient accommodation lodging shall not be considered compensation.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

## ACT 221

S.B. NO. 2784

A Bill for an Act Relating to Workers’ Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 386-95, Hawaii Revised Statutes, is amended to read as follows:

**“§386-95 Reports of injuries, other reports, penalty.** Every employer shall keep a record of all injuries, fatal or otherwise, received by the employer’s employees in the course of their employment, when known to the employer or brought to the employer’s attention.

Within seven working days after the employer has knowledge of such injury causing absence from work for one day or more or requiring medical treatment beyond ordinary first aid, the employer shall make a report thereon to the director. The report shall set forth the name, address, and nature of the employer’s business and the name, age, sex, wages, and occupation of the injured employee and shall state the date and hour of the accident, if the injury is produced thereby, the nature and cause of the injury, and such other information as the director may require.

[~~On December~~] By January 31 of each year, the employer shall [~~make a report to~~] file with the director a report with respect to each injury on which the

employer is continuing to pay compensation, showing all amounts paid by the employer on account of the injury.

The reports required by this section shall be made on forms to be obtained from the director pursuant to section 386-71 and deposit of reports in the United States mail, addressed to the director, within the time specified shall be deemed compliance with the requirements of this section.

When an injury results in immediate death, the employer shall within forty-eight hours notify personally or by telephone a representative of the department in the county where the injury occurred.

Within thirty days after final payment of compensation for an injury, the employer shall ~~make~~ file a final report ~~to~~ with the director showing the total payments made, the date of termination of temporary total disability, and such other information as the director may require.

Any employer who wilfully refuses or neglects to ~~make~~ file any of the reports or give any notice required by this section shall be fined by the director not more than \$5,000.

Copies of all reports, other than those of fatal injuries, filed with the director as required by this section shall be sent to the injured employee by the employer.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

## ACT 222

S.B. NO. 2786

A Bill for an Act Relating to the Hoisting Machine Operators Advisory Board.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to place the hoisting machine operators advisory board (board) within the department of labor and industrial relations in accordance with section 6 of article V of the Hawaii Constitution. This Act also places the half-time executive director position under the control of the board, and excludes this position from civil service and collective bargaining.

SECTION 2. Section 396-19, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§396-19[)] Hoisting machine operators advisory board.** (a) There is created a hoisting machine operators advisory board, which shall be placed in the department for administrative purposes, to be composed of five members to serve without compensation and without reimbursement for expenses. Members shall be appointed by the governor under section 26-34.

The board shall adopt rules pursuant to chapter 91 for the certification of hoisting machine operators.

(b) The hoisting machine operators advisory board may employ a 0.5 full-time equivalent executive director, without regard to chapters 76 and 89 and may dismiss such person as it finds necessary for the performance of its function and duties. The board shall have the authority to fix the executive director’s compensation.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

ACT 223

S.B. NO. 2824

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to comply with section 235-2.5, Hawaii Revised Statutes, which mandates that the department of taxation submit a bill to each regular session of the legislature that amends Hawaii income tax law to conform with changes to the Internal Revenue Code.

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended to read as follows:

**“§235-2.3 Conformance to the federal Internal Revenue Code; general application.** (a) For all taxable years beginning after December 31, [2000,] 2001, as used in this chapter “Internal Revenue Code” means subtitle A, chapter I of the federal Internal Revenue Code of 1986, as amended as of December 31, [2000,] 2001, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal public laws which pursuant to this chapter do not apply or are otherwise limited in application.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.

(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 1(h)(3) (relating to net capital gain reduced by the amount taken into account as investment income), except section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);

- (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);
- (7) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
- (8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
- (9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
- (10) Section 196 (with respect to deduction for certain unused investment credits);
- (11) Section 222 (with respect to qualified tuition and related expenses);
- ~~[(11)]~~ (12) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
- ~~[(12)]~~ (13) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
- ~~[(13)]~~ (14) Section 291 (with respect to special rules relating to corporate preference items);
- ~~[(14)]~~ (15) Section 367 (with respect to foreign corporations);
- ~~[(15)]~~ (16) Section 501(c)(12), (15), (16) (with respect to exempt organizations);
- ~~[(16)]~~ (17) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
- ~~[(17)]~~ (18) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
- ~~[(18)]~~ (19) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
- ~~[(19)]~~ (20) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
- ~~[(20)]~~ (21) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- ~~[(21)]~~ (22) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- ~~[(22)]~~ (23) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- ~~[(23)]~~ (24) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- ~~[(24)]~~ (25) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;
- ~~[(25)]~~ (26) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- ~~[(26)]~~ (27) Section 1055 (with respect to redeemable ground rents);
- ~~[(27)]~~ (28) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- ~~[(28)]~~ (29) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);

- [28)] (30) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations); [and
- (29)] (31) Subchapter U (sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E[-]; and
- (32) Subchapter W (sections 1400 to 1400C) (with respect to District of Columbia enterprise zone.”

SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

**“§235-2.4 Operation of certain Internal Revenue Code provisions; sections 63 to 530.** (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead read:

- (1) \$1,900 in the case of:
  - (A) A joint return as provided by section 235-93; or
  - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (2) \$1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
- (3) \$1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (4) \$950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual’s earned income. Section 63(f) shall not be operative in this State.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

(e) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

(f) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with

respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

(g) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that it shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

(h) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

(i) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

(j) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

(k) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

(l) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.



(m) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

(n) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

(o) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that section 529(c)(6) shall not be operative.

~~[(e)]~~ (p) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2001, except as otherwise provided in this Act.

(Approved June 28, 2002.)

## ACT 224

H.B. NO. 2438

A Bill for an Act Relating to Identity.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding to part IV three new sections to be appropriately designated and to read as follows:

**“§708- Identity theft in the first degree.** (1) A person commits the offense of identity theft in the first degree if that person makes or causes to be made, either directly or indirectly, a transmission of any personal information of another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to:

- (a) Facilitate the commission of a murder in any degree, a class A felony, kidnapping, unlawful imprisonment in any degree, extortion in any degree, any offense under chapter 134, criminal property damage in the first or second degree, escape in any degree, any offense under part VI of chapter 710, any offense under section 711-1103, or any offense under chapter 842; or
  - (b) Commit the offense of theft in the first degree from the person whose personal information is used, or from any other person or entity.
- (2) Identity theft in the first degree is a class A felony.

**§708- Identity theft in the second degree.** (1) A person commits the offense of identity theft in the second degree if that person makes or causes to be made, either directly or indirectly, a transmission of any personal information of

another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to commit the offense of theft in the second degree from any person or entity.

(2) Identity theft in the second degree is a class B felony.

**§708- Identity theft in the third degree.** (1) A person commits the offense of identity theft in the third degree if that person makes or causes to be made, either directly or indirectly, a transmission of any personal information of another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to commit the offense of theft in the third or fourth degree from any person or entity.

(2) Identity theft in the third degree is a class C felony.’’

SECTION 2. Chapter 710, Hawaii Revised Statutes, is amended by adding to part V three<sup>1</sup> new sections to be appropriately designated and to read as follows:

**“§710- Obtaining a government-issued identification document under false pretenses in the first degree.** (1) A person commits the offense of obtaining a government-issued identification document under false pretenses in the first degree if that person, with intent to mislead a public servant and intent to facilitate a felony, obtains an identification document issued by the State or any political subdivision thereof by:

- (a) Making any statement, oral or written, that the person does not believe to be true, in an application for any identification document issued by the State or any political subdivision thereof; or
- (b) Submitting or inviting reliance on any writing that the person knows to be falsely made, completed, or altered.

(2) Obtaining a government-issued identification document under false pretenses in the first degree is a class C felony.

**§710- Obtaining a government-issued identification document under false pretenses in the second degree.** (1) A person commits the offense of obtaining a government-issued identification document under false pretenses in the second degree if that person, with intent to mislead a public servant, obtains an identification document issued by the State or any political subdivision thereof by:

- (a) Making any statement, oral or written, that the person does not believe to be true, in an application for any identification document issued by the State or any political subdivision thereof; or
- (b) Submitting or inviting reliance on any writing that the person knows to be falsely made, completed, or altered.

(2) Obtaining a government-issued identification document under false pretenses in the second degree is a misdemeanor.’’

SECTION 3. Section 286-131, Hawaii Revised Statutes, is amended to read as follows:

**“§286-131 Unlawful use of license.** No person shall:

- (1) Display or permit to be displayed or have in the person’s possession any canceled, revoked, or suspended[, fictitious, ~~or fraudulently altered~~] driver’s license;
- (2) Lend the person’s driver’s license to any other person or knowingly permit the use thereof by another;
- (3) Display or represent as one’s own any driver’s license not issued to the person;

- (4) Fail or refuse to surrender to the examiner of drivers, upon the examiner's lawful demand, any driver's license that has been suspended, revoked, or canceled;
- [~~(5) Use a false or fictitious name in any application for a driver's license or knowingly make a false statement or knowingly conceal a material fact, or otherwise commit a fraud in any such application;~~] or
- [~~(6)~~] (5) Use or have in the person's possession any reproduction, imitation, or facsimile of any driver's license or any identification with the appearance of a driver's license."

SECTION 4. Section 708-800, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Personal information" means information associated with an actual person or a fictitious person that is a name, an address, a telephone number, an electronic mail address, a driver's license number, a social security number, an employer, a place of employment, information related to employment, an employee identification number, a mother's maiden name, an identifying number of a depository account, a bank account number, a password used for accessing information, or any other name, number, or code that is used, alone or in conjunction with other information, to confirm the identity of an actual or a fictitious person."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

#### Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

## ACT 225

H.B. NO. 2720

A Bill for an Act Relating to the Use Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 238-9.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§238-9.5] [Report] Motor vehicle importation; report by dealers[-]; proof of payment. (a) Every dealer, as defined in section 437-1.1, shall submit a report to the director, on or before the last day of each calendar month, for all motor vehicles delivered by the dealer in the prior month as a courtesy delivery. The report shall contain the name and address of the dealer making the courtesy delivery, name and address of the seller of the vehicle, type of motor vehicle, the landed value of the vehicle, the name and address of the purchaser or importer, the date of importation, and other information relevant to the courtesy delivery as requested by the director.**

As used in this section, "courtesy delivery" means the preparation for delivery and the delivery by a dealer of a motor vehicle imported into the State by a person who purchased the motor vehicle from an out-of-state motor vehicle manufacturer or an out-of-state dealer and does not apply to motor vehicles sold by the in-state dealer.

(b) The director of taxation shall prepare forms necessary for individuals importing motor vehicles into the State to prove payment of the use tax necessary to register the motor vehicle.”

SECTION 2. Section 286-41, Hawaii Revised Statutes, is amended to read as follows:

**“§286-41 Application for registration; full faith and credit to current certificates; this part not applicable to certain equipment.** (a) Every owner of a motor vehicle which is to be operated upon the public highways shall, for each vehicle owned, except as herein otherwise provided, apply to the director of finance of the county where the vehicle is to be operated, for the registration thereof. If a vehicle is moved to another county and is to be operated upon the public highways of that county, the existing certificate of registration shall be valid until its expiration date, at which time the owner shall apply to the director of finance of the county in which the vehicle is then located for the registration of the vehicle, whether or not the owner is domiciled in the county or the owner’s principal place of business is in that county, except that this provision shall not apply to vehicles which are temporarily transferred to another county for a period of not more than three months.

(b) Application for the registration of a vehicle shall be made upon the appropriate form furnished by the director of finance and shall contain the name, occupation, and address of the owner and legal owner; and, if the applicant is a member of the United States naval or military forces, the applicant shall give the organization and station. All applications shall also contain a description of the vehicle, including the name of the maker, the type of fuel for the use of which it is adapted (e.g., gasoline, diesel oil, liquefied petroleum gas), the serial or motor number, and the date first sold by the manufacturer or dealer, and such further description of the vehicle as is called for in the form, and such other information as may be required by the director of finance, to establish legal ownership. A person applying for initial registration of a neighborhood electric vehicle shall certify in writing that a notice of the operational restrictions applying to the vehicle as provided in section 291C-134 are contained on a permanent notice attached to or painted on the vehicle in a location that is in clear view of the driver.

(c) If the vehicle to be registered is specially constructed, reconstructed, or rebuilt; is a special interest vehicle; or is an imported vehicle, this fact shall be stated in the application and upon the registration of the special interest motor vehicle and imported motor vehicle, which has been registered until that time in any other state or county, and the owner shall surrender to the director of finance the certificates of registration or other evidence of such form of registration as may be in the applicant’s possession or control. The director of finance shall grant full faith and credit to the currently valid certificates of title and registration describing the vehicle, the ownership thereof, and any liens noted thereon, issued by any title state or county in which the vehicle was last registered. The acceptance by the director of finance of a certificate of title or of registration issued by another state or county, as provided in this subsection, in the absence of knowledge that the certificate is forged, fraudulent, or void, shall be a sufficient determination of the genuineness and regularity of the certificate and of the truth of the recitals therein, and no liability shall be incurred by any officer or employee of the director of finance by reason of so accepting the certificate.

(d) The owner of every motor vehicle of the current, previous, and subsequent year model bought out-of-state, subsequently brought into the State, and subject to the use tax under chapter 238 shall provide with the application for registration proof of payment of the use tax pursuant to requirements established by

the department. No registration certificate shall be issued without proof of payment of the use tax.

[(d)] (e) Notwithstanding any other law to the contrary, the director of finance of the county in which the application for registration is sought shall not require proof of insurance as a condition to satisfy the requirements of this part. This subsection shall apply only to the initial registration of any motor vehicle.

[(e)] (f) The provisions of this part requiring the registration of motor vehicles shall not apply to:

- (1) Special mobile equipment;
- (2) Implements of husbandry temporarily drawn, moved, or otherwise propelled upon the public highways; and
- (3) Aircraft servicing vehicles which are being used exclusively on lands set aside to the department of transportation for airport purposes.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2003.

(Approved June 28, 2002.)

## ACT 226

H.B. NO. 2752

A Bill for an Act Relating to Professional and Vocational Licenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that individuals who default on state or federal student loans and scholarship contracts create a significant taxpayer liability. At present, the only sanction against defaulters in Hawaii is the federal government’s exclusion of medical professionals from participation in medicaid and medicare, resulting in the loss of clinical services to the most needy in our communities. The legislature finds that those individuals who have received a substantial economic benefit from their student loans at the expense of taxpayers should be required to honor their service or loan commitments.

The purpose of this Act is to encourage repayment of student loans administered by the State and the federal government as well as deter future defaulters by providing, among other things and as a last resort, for the suspension, denial, or nonrenewal of licenses for professions and vocations regulated by the State. This Act shall not apply to a person who obtained a nonfederal student loan administered by another state.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER STUDENT LOAN DEFAULTS

§ -1 **Definitions.** As used in this chapter, unless otherwise indicated by the context:

“Administering entity” means the federal or state governmental entity that administers a student loan, student loan repayment, or scholarship program.

“Applicable licensing authority” means the director of commerce and consumer affairs, or any licensing board or commission under the administrative control of the director of commerce and consumer affairs, the director of health, the insurance commissioner, or the supreme court.

“Default” means the failure of the borrower of a student loan to make an installment payment at least two hundred seventy days after the due date, or failure to comply with other terms of the promissory note or written repayment agreement.

“License” means the permission to engage in a profession or vocation granted by the applicable state licensing authority to a person who has satisfied every requirement for licensure, and shall include any registration, certificate, or other document issued by the applicable licensing authority reflecting proof of permission.

“Licensee” means the person in whose name the applicable licensing authority grants a license.

“Licensing laws” means the applicable chapter providing for the regulation, licensing, and practice of a profession or vocation by the applicable licensing authority.

“Reinstate” or “reinstatement” means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person whose license has been previously suspended by the applicable licensing authority.

“Renew” or “renewal” means the permission to engage in a profession or vocation granted by the applicable licensing authority to a licensee who has applied for an extension of a current and valid license.

“Repayment plan” means any plan entered into by the borrower with the applicable administering entity to satisfy a delinquent student loan or unfulfilled service obligation.

“Scholarship contract” means a grant made by the State or any of its agencies, or the United States, to a person to support the person while attending a public or private institution of higher education or other post-secondary educational establishment in exchange for the person’s agreement to perform a service obligation.

“Student loan” means a loan made or guaranteed by the State or any of its agencies, or the United States, to a person to support the person while attending a public or private institution of higher education or other post-secondary educational establishment.

“Student loan repayment contract” means an agreement by the State or any of its agencies, or the United States, to repay all or part of a person’s student loan in exchange for the person’s agreement to perform a service obligation.

**§ -2 Professional and vocational license sanction for default of student loan or scholarship contract.** (a) In addition to any other acts or conditions provided by law, the applicable licensing authority shall not renew or reinstate, or shall deny, suspend, or revoke the license or application of any person who has been certified by an administering entity as being:

- (1) In default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract; or
- (2) At least sixty days past due with payments under a repayment plan.

The applicable licensing authority in receipt of the certification shall not renew or reinstate, or shall deny, suspend, or revoke the license or application without further review or hearing.

(b) The applicable licensing authority shall renew, reinstate, or grant the license upon receipt of an authorization from the administering entity stating that the person is making payments or taking other action satisfying the terms of the student

loan, student loan repayment contract, or scholarship contract and is no longer in default or breach of the loan or contract.

(c) Any licensing fees paid prior to the denial, suspension, or revocation of a license under the licensing laws shall be forfeited. The applicable licensing authority may charge fees for reinstating a license and to cover the costs of administering this chapter.

(d) This chapter shall not apply to an individual against whom a court order is entered in connection with the default or breach in the nature of a garnishment process or other form of court-ordered repayment.”

SECTION 3. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

**“§436B- Denial, suspension, or revocation of license for default of student loan or scholarship contract.** In addition to any other acts or conditions provided by law, the licensing authority shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the department has received certification from an administering entity pursuant to chapter that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the licensing authority shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity. Chapter 91 and sections 92-17, 436B-18, 436B-20, 436B-21, 436B-24, and 436B-25 shall not apply to a license suspension or denial under this section.”

SECTION 4. Chapter 302A,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

**“§302A-807 Refusal, suspension, revocation, and reinstatement of licenses and credentials.** (a) The board shall serve as the final adjudicator for appeals relating to licensing and credentialing, including the issuance or nonissuance of licenses and credentials, and the suspension, nonrenewal, and revocation of licenses and credentials.

(b) The board shall establish procedures for the conduct of proceedings for the consideration of requests filed with the board. In every case to revoke or suspend a license or credential, the board shall give the person concerned written notice that a request has been filed with the board. The board shall conduct a hearing in conformity with chapter 91, and shall provide for confidentiality of the proceedings to protect the parties. In all proceedings before it, the board may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the board or to any subpoena issued by the board, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license or credential, or any licensee or credential holder whose license or credential has been suspended or revoked, shall have the right to appeal the board’s decision to the circuit court of the circuit in which the applicant, licensee, or credential holder resides in the manner provided in chapter 91; provided that out-of-state resident applicants shall file their appeals in the first circuit court.

(d) Upon revocation of a license or credential, the board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the license or credential:

- (1) To the department; and
- (2) For the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had licenses or credentials revoked.

(e) The board shall not renew or reinstate, or shall deny, suspend, or revoke, any license, credential, or application, if the board has received certification from an administering entity pursuant to chapter that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the board shall renew, reinstate, or grant the license or credential only upon receipt of an authorization from the administering entity."

SECTION 5. Chapter<sup>1</sup> 321-15, Hawaii Revised Statutes, is amended to read as follows:

**"§321-15 Biennial registration; fees, failure to register<sup>1</sup>; denial, suspension, or revocation of a license.** (a) Every person holding a license to practice any occupation specified in section 321-13(a)(1) shall reregister with the department of health every other year in accordance with the rules of the department, before February 1 except where superseded by federal law, and shall pay a reregistration fee. The failure, neglect, or refusal of any person holding such a license to reregister or pay the reregistration fee, after thirty days of delinquency, shall constitute a forfeiture of the person's license; provided that the license shall be restored upon written application therefor together with a payment of all delinquent fees and an additional late reregistration fee that may be established by the director of health. All fees collected pursuant to this section shall be deposited into the environmental health education fund established under section 321-27.

(b) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the department has received certification from the child support enforcement agency pursuant to the terms of section 576D-13 that the licensee or applicant is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the department shall grant, renew, restore, or reinstate a license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court.

(c) The department shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the department has received certification from an administering entity pursuant to chapter that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the department shall grant, renew, or reinstate a license only upon receipt of an authorization from the administering entity."

SECTION 6. Section 431:9-235, Hawaii Revised Statutes, is amended to read as follows:

**"§431:9-235 Denial, suspension, revocation of licenses.** (a) The commissioner may suspend, revoke, or refuse to extend any license issued under this article or any surplus lines broker's license for any cause specified in any other provision of this article, or for any of the following causes:



- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (2) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (3) If the licensee has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, or converted to the licensee's own use, or has illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (6) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (7) If in the conduct of the licensee's affairs under the license, the licensee has shown oneself to be a source of injury and loss to the public;
- (8) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind; or
- (9) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee's licenses.

(b) The license of any partnership or corporation may be so suspended, revoked, or refused for any of such causes as relate to any individual designated in the license to exercise its powers.

(c) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request.

(d) The commissioner shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the commissioner has received certification from an administering entity pursuant to chapter that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the commissioner shall renew, reinstate, or grant a license only upon receipt of an authorization from the administering entity."

SECTION 7. Section 457-9, Hawaii Revised Statutes, is amended to read as follows:

**"§457-9 Renewal of license[.]; denial, suspension, or revocation of license for default of student loan or scholarship contract.** (a) The license of every person licensed under this chapter shall expire on June 30 of every odd-numbered year and shall be renewed biennially, except as provided in this section. Biennially in each odd-numbered year, the board shall make available an application for renewal of license before the deadline set forth by the board to every person to whom a license was issued or renewed during the biennium. The applicant shall complete the application and submit it to the board with a renewal fee and any required documents on or before the deadline set forth by the board. The applicant shall provide documents from proper agencies or parties relating to any disciplinary action taken or pending in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States within the two years prior to application for renewal of license. Upon receipt of the application and fee the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the biennium expiring two years hence on the deadline set

forth by the board. The renewal shall render the holder thereof a legal practitioner of nursing for the period stated on the renewal form.

(b) Any licensee who fails to renew a license as provided in subsection (a) but continues to practice shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter; provided that the person's license may be restored by the board on satisfactory explanation of the failure to renew and on payment of the renewal fee and a penalty fee.

A nurse who fails to renew a license as provided in subsection (a) and does not engage in nursing in the State for one year after the license has been forfeited shall not be required to pay the renewal or penalty fee; provided that the nurse remains inactive during that year. Should the nurse wish to resume nursing at some future time, the nurse shall notify the board and remit the renewal fee and application form as provided in subsection (a).

(c) Notwithstanding any provision in this chapter to the contrary, the board shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the board has received certification from an administering entity pursuant to chapter that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the board shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity."

SECTION 8. Chapter<sup>1</sup> 466J-8, Hawaii Revised Statutes, is amended to read as follows:

**"§466J-8 Denial, revocation, or suspension of license.** (a) The board shall have the power to deny, revoke, or suspend any license issued or applied for in accordance with this chapter, upon proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice as a radiographer or as a radiation therapy technologist;
- (2) Is mentally incompetent;
- (3) Is guilty of unprofessional conduct; or
- (4) Has knowingly or repeatedly violated this chapter.

(b) Before denying, suspending, or revoking any license pursuant to subsection (a), the board shall furnish the licensee a notice in writing as prescribed by section 91-9 and shall afford the licensee an opportunity to be heard in person and by or with counsel. Any order denying a license, or suspending or revoking a license shall be rendered not later than fifteen days after the hearing, and any aggrieved person may appeal the order as provided in chapter 91.

(c) The board shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the board has received certification from the child support enforcement agency pursuant to the terms of section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the board shall issue, renew, restore, or reinstate the license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court. Subsection (b) shall not apply to a license suspension pursuant to this subsection.

(d) The board shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the board has received certification from an administering entity pursuant to chapter that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless other-

wise provided by law, the board shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 9. Chapter<sup>1</sup> 605-1, Hawaii Revised Statutes, is amended to read as follows:

**“§605-1 Attorneys, qualifications.** (a) The supreme court may examine, admit, and reinstate as practitioners in the courts of the State, such persons as it may find qualified for that purpose, who have taken the prescribed oath of office. The supreme court shall have the sole power to revoke or suspend the license of any such practitioner.

(b) In order to be licensed by the supreme court, a person shall be of good moral character, and shall satisfy such residence and other requirements as the supreme court may prescribe.

(c) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with an order of support as defined in section 576D-1 and has not failed to comply with a subpoena or warrant relating to a paternity or child support hearing.

(d) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with any obligation under any student loan, student loan repayment contract, or scholarship contract, or shall be in compliance with a repayment plan as provided in chapter \_\_\_\_.”

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 11. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 227

S.B. NO. 331

A Bill for an Act Relating to Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The process involved in evicting public housing tenants with serious or repeated violations of their rental agreements is slow and protracted. Up to eighteen months can elapse before the housing and community development corporation of Hawaii can evict a tenant from public housing. This protracted process hurts not only the State, which incurs revenue losses when tenants involved in eviction procedures stop paying rent, but also the majority of public housing tenants who abide by their leases and the needy families who are waiting to be placed in public housing.

The purpose of this Act is to streamline the administrative eviction process without impairing the tenant’s due process rights.

SECTION 2. Section 201G-51, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘‘Tenant’’ means any person occupying a room, dwelling accommodation, living quarters, or space in any public housing project, under or by virtue of any tenancy lease, license, or permit under or from the corporation.’’

SECTION 3. Section 201G-33, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§201G-33[H] Delinquent accounts.** (a) Notwithstanding section 40-82, the corporation, with the approval of the attorney general, may delete from its accounts receivable records delinquent accounts for vacated units within federal low rent public housing projects that have been delinquent for at least ninety days.

(b) The delinquent accounts may be assigned to a collection agency.

(c) Before the corporation seeks eviction of a tenant due to delinquency in payment of rent, the corporation shall comply with the procedures set forth in section 201G-52(b) before proceeding with the eviction hearing.’’

SECTION 4. Section 201G-52, Hawaii Revised Statutes, is amended to read as follows:

**“§201G-52 Termination and eviction.** (a) Except as [hereinafter] otherwise provided, the corporation may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises located within a public housing project and evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease rental agreement, permit, or license;
- (3) Violation of any of the rules of the corporation;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition; or
- (5) The existence of any other circumstances giving rise to an immediate right to possession by the corporation.

(b) When any tenant has been delinquent in payment of rent, the corporation, either directly or through its managing agent, shall provide the tenant with a written notice no later than forty-five days from the date of delinquency that shall inform the tenant of the delinquency and schedule a meeting between the tenant and the corporation or its agent. The written notice shall:

- (1) Inform the tenant that continued delinquency shall result in the tenant’s eviction;
- (2) Inform the tenant of the tenant’s right to apply for an interim adjustment in rent;
- (3) Explain to the tenant the steps of the grievance and eviction processes and how the processes protect the tenant;
- (4) Provide the tenant with a sample letter for demanding a grievance hearing;
- (5) Set forth the location, date, and time, which shall be no earlier than fourteen days from the date of the written notice, at which the tenant may meet with the corporation or its agent to discuss the delinquency in rent; and
- (6) Inform the tenant that the tenant shall either attend the meeting or, if applicable, contact the corporation or the corporation’s agent before the meeting time to reschedule the meeting.

(c) At the meeting described in subsection (b), the corporation or its agent shall:

- (1) Inquire into the cause of the tenant's delinquency and offer suggestions that the corporation may feel appropriate, if any, to address the causes of delinquency;
- (2) Consider whether a reasonable payment plan is appropriate for the tenant's situation and, if appropriate, offer a payment plan to the tenant; and
- (3) Inform the tenant of and explain the issues as required under subsection (b)(1), (2), and (3).

(d) The corporation shall develop a checklist outlining all of the requirements listed in subsection (c). The corporation or its agent and the tenant shall complete, sign, and date the checklist to memorialize the meeting.

(e) If the tenant fails to attend or reschedule the meeting provided for in subsection (c), the corporation shall provide the tenant with a second written notice. The notice shall inform the tenant that:

- (1) The corporation shall proceed to terminate the tenant's tenancy because of the tenant's outstanding rent delinquency and the tenant's failure to respond to the corporation's written notice issued pursuant to subsection (b);
- (2) The tenant has thirty days from receipt of the second written notice to request a grievance hearing; and
- (3) If the tenant fails to request a grievance hearing within thirty days, the corporation has the right to proceed with the eviction hearing pursuant to section 201G-53.

(f) If the tenant meets with the corporation as provided for in subsection (c), the corporation shall decide, based upon the facts discussed at the meeting, what action is appropriate to address the tenant's case. The corporation shall notify the tenant of such decision in writing. If the corporation decides to proceed with an action to terminate the tenancy, the corporation shall further inform the tenant in the same written notice that:

- (1) The tenant has thirty days from receipt of this notice to request a grievance hearing; and
- (2) If the tenant fails to request a grievance hearing within thirty days, the corporation has the right to proceed with the eviction hearing pursuant to section 201G-53.'

SECTION 5. Section 201G-53, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~201G-53~~] H~~ Hearings.** (a) Where the corporation proposes to terminate a lease, rental agreement, permit, or license, and evict a tenant, licensee, or other occupant under section 201G-52, a hearing shall be held to determine whether cause exists for the action. The corporation shall give written notice to the person concerned specifying the reason for which the eviction is proposed and fixing the date and place of hearing. The written notice shall further inform the tenant, licensee, or other occupant of the right to inspect and copy the tenant file at the tenant's expense before the hearing is held. The notice shall be given at least five days before the date set for the hearing. At the hearing, before final action is taken, the person concerned shall be entitled to be heard in person or through counsel, and shall be accorded a full and fair hearing[.] in accordance with the requirements of a contested case hearing provided for under sections 91-9 and 91-10 to 91-13. This full and fair hearing shall be deemed to be a contested case hearing before the agency that is required pursuant to chapter 91.

(b) Hearings shall be conducted by ~~[a trial examiner or]~~ an eviction board appointed by the corporation. The eviction board shall consist of not ~~[less]~~ fewer than three persons~~]. Trial examiners or members of the board may be contract hires or employees of the corporation. At least one trial examiner or board, hereinafter called the hearing examiners]~~, of which one member shall be a tenant. At least one eviction board shall be established in each county of the State. The findings, conclusions, decision, and order of the ~~[hearing examiners]~~ eviction board shall be final unless an appeal is taken as hereinafter provided.

(c) The ~~[hearing examiners]~~ eviction board shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the ~~[hearing examiners,]~~ eviction board, or of any subpoena issued by ~~[them,]~~ the eviction board, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the ~~[hearing examiners,]~~ eviction board, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 6. Section 201G-55, Hawaii Revised Statutes, is amended to read as follows:

“~~[(E)]~~**§201G-55[E] Eviction.** (a) If it is proven to the satisfaction of the ~~[hearing examiner]~~ eviction board that there is cause to terminate a lease, rental agreement, permit, or license and evict the tenant, licensee, or other occupant, ~~[a writ of possession shall be issued by the corporation.]~~ the corporation shall provide the tenant with a written notice of the corporation’s decision to terminate the lease. The notice shall inform the tenant that a writ of possession may be issued by the corporation within ten days. The notice shall also inform the tenant of whether the grounds for eviction are considered curable, and if so, what the tenant must do to remedy the grounds, by when it must be done, and what the tenant must do to document for the corporation that the grounds have been remedied.

(b) When the grounds for termination of the lease may be cured by the occupant, licensee, or other occupant, the tenant shall have ten days from receipt of the notice provided for in subsection (a) to cure such grounds. If the grounds are cured within the ten-day period, no writ of possession may be issued. If the condition is not cured within the ten-day period, the corporation may issue a writ of possession forthwith.

(c) The corporation may adopt rules to define curable and non-curable grounds for eviction pursuant to chapter 91. The corporation may consider a tenant’s history in determining non-curable grounds for eviction. A tenant’s history may include chronic or consistent delinquency, or repeated violations of the terms of the rental agreement.

~~[(b)]~~ The order of eviction shall not be enforced for five days after its entry.] (d) Enforcement of the order by a writ of possession shall be effected either by an officer appointed by the corporation, who shall have all of the powers of a police officer for all action in connection with the enforcement of the order, or by the sheriff, or any other law enforcement officer of the State or any county, whose duty it shall be to carry out the order. The person enforcing the order shall remove all persons from the premises and put the corporation in full possession thereof.

~~[(e)]~~ (e) Upon eviction, the household goods and personal effects of the person against whom the order is entered, and those of any persons using the premises incident to the person’s holding, may be removed from the premises and stored by the corporation. If the action is taken, the corporation shall have a lien on the property so taken for the expenses incurred by it in moving and storing the same,

and the corporation is authorized to sell or otherwise dispose of the property, if unclaimed after thirty days.”

SECTION 7. Section 201G-56, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§201G-56]]~~ **Ex parte motion.** If a tenant or licensee cannot be served with an order of eviction or writ of possession, and the facts shall appear by affidavit to the ~~[hearing examiners;]~~ corporation, service to the tenant or licensee may be made according to the special order of the ~~[hearing examiners;]~~ corporation. The order shall require the officer to affix a certified copy of the order of eviction or writ of possession in a conspicuous place upon the premises such as the door or wall of the dwelling unit.”

SECTION 8. Section 201G-54, Hawaii Revised Statutes, is repealed.

SECTION 9. The housing and community development corporation of Hawaii shall submit a report to the legislature no later than twenty days before the convening of the regular session of 2006 that contains the following information:

- (1) The annual and total numbers of public housing evictions, categorized according to the general nature of the lease violation or grounds for eviction;
- (2) The annual and total numbers of potential evictions that were averted due to the curing of the lease violation;
- (3) For each category of eviction in paragraph (1), the annual average length of time of the eviction proceeding, from the date written notice is first provided to the tenant of a rent delinquency (for nonpayment cases) or of the corporation’s intent to terminate the lease, to the date of execution of the writ of possession;
- (4) Findings as to whether the procedures implemented under this Act have positively or negatively affected the eviction process or impacted upon the due process rights of tenants; and
- (5) Proposed legislation to extend or repeal the sunset, or that improves upon the eviction process while protecting tenants’ rights.

SECTION 10. This Act shall continue to apply to all eviction proceedings commenced hereunder, but pending on July 1, 2007, and all procedures established under this Act shall remain in effect until the completion of the pending proceedings.

SECTION 11. All rules, policies, procedures, guidelines, and other material adopted or developed by the corporation to implement provisions of the Hawaii Revised Statutes that are amended or repealed by this Act, shall remain in full force and effect until amended or repealed by the corporation pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 12. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval and shall be repealed on July 1, 2007; provided that sections 201G-33, 201G-51, 201G-52, 201G-53, 201G-54, 201G-55, and 201G-56, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 28, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 228

S.B. NO. 940

A Bill for an Act Relating to Insurance Unfair Practices.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:13-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
  - (A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
  - (B) Misrepresents the dividends or share of the surplus to be received on any insurance policy;
  - (C) Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;
  - (D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
  - (E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;
  - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;
  - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy;
  - (H) Misrepresents any insurance policy as being shares of stock;
  - (I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or
  - (J) Publishes or advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person’s insurance business, which is untrue, deceptive, or misleading.
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously



critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

- (4) Boycott, coercion, and intimidation.
  - (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; or
  - (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.
- (5) False financial statements.
  - (A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer; or
  - (B) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.
- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
- (7) Unfair discrimination.
  - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract;
  - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the term or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder;
  - (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

- (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
    - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
  - (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:
    - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
    - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
  - (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;
  - (F) To terminate, modify coverage, or refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to disability insurance sold by a casualty insurer; provided further that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;
  - (G) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance; or
  - (H) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because the individual refuses to consent to the release of information which is confidential as provided in section 325-101; provided that nothing in this subparagraph shall prohibit an insurer from obtaining and using the results of a test satisfying the requirements of the commissioner, which was taken with the consent of an applicant for insurance; provided further that any applicant for insurance who is tested for HIV infection shall be afforded the opportunity to obtain the test results, within a reasonable time after being tested, and that the confidentiality of the test results shall be maintained as provided by section 325-101.
- (8) Rebates. Except as otherwise expressly provided by law:
- (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to the contract other than as plainly expressed in the contract, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or

- other benefits, or any valuable consideration or inducement not specified in the contract; or
- (B) Giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract.
- (9) Nothing in paragraph (7) or (8) shall be construed as including within the definition of discrimination or rebates any of the following practices:
- (A) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance; provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;
- (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;
- (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year; and
- (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this article.
- (10) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that:
- (A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10; ~~and~~
- (B) This paragraph shall not apply to entities licensed under chapter 386~~;~~ or 431:10C~~[-432, or 432D-]; and~~
- (C) For entities licensed under chapter 432 or 432D:
- (i) It shall not be a violation of this section to refuse to provide or limit coverage available to an individual because the entity determines that the individual reasonably appears to have coverage available under chapter 386 or 431:10C; and
- (ii) Payment of claims to an individual who may have a third-party claim for recovery of damages may be conditioned upon the individual first signing and submitting to the entity documents to secure the lien and reimbursement rights of the entity, and providing information reasonably related to the entity's investigation of its liability for coverage.
- Any individual who knows or reasonably should know that the individual may have a third-party claim for recovery of damages, and who fails to provide timely notice of the potential claim to the entity, shall be deemed to have waived the prohibition of this paragraph against refusal or limitation of coverage. "Third-party claim" for purposes of this paragraph means any tort claim for

monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 432 or 432D.

- (11) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
  - (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
  - (B) With respect to claims arising under its policies, failing to respond with reasonable promptness, in no case more than fifteen working days, to communications received from:
    - (i) The insurer's policyholder;
    - (ii) Any other persons, including the commissioner; or
    - (iii) The insurer of a person involved in an incident in which the insurer's policyholder is also involved.

The response shall be more than an acknowledgment that such person's communication has been received, and shall adequately address the concerns stated in the communication;
  - (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
  - (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
  - (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
  - (F) Failing to offer payment within thirty calendar days of affirmation of liability, if the amount of the claim has been determined and is not in dispute;
  - (G) Failing to provide the insured, or when applicable the insured's beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported;
  - (H) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
  - (I) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
  - (J) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
  - (K) Attempting to settle claims on the basis of an application which was altered without notice, knowledge, or consent of the insured;
  - (L) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
  - (M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
  - (N) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission

- of formal proof of loss forms, both of which submissions contain substantially the same information;
- (O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;
  - (P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; and
  - (Q) Indicating to the insured on any payment draft, check, or in any accompanying letter that the payment is “final” or is “a release” of any claim if additional benefits relating to the claim are probable under coverages afforded by the policy; unless the policy limit has been paid or there is a bona fide dispute over either the coverage or the amount payable under the policy.
- (12) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination under section 431:2-302. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this section, “complaint” means any written communication primarily expressing a grievance.
- (13) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.”

SECTION 2. Section 663-10, Hawaii Revised Statutes, is amended to read as follows:

**“§663-10 Collateral sources; protection for liens and rights of subrogation.** (a) In any civil action in tort, the court, before any judgment or stipulation to dismiss the action is approved, shall determine the validity of any claim of a lien against the amount of the judgment or settlement by any person who files timely notice of the claim to the court or to the parties in the action. The judgment entered, or the order subsequent to settlement, shall include a statement of the amounts, if any, due and owing to any person determined by the court to be a holder of a valid lien and to be paid to the lienholder out of the amount of the corresponding special damages recovered by the judgment or settlement. In determining the payment due the lienholder, the court shall deduct from the payment a reasonable sum for the costs and fees incurred by the party who brought the civil action in tort. As used in this section, lien means a lien arising out of a claim for payments made or indemnified from collateral sources, including health insurance or benefits, for costs and expenses arising out of the injury which is the subject of the civil action in tort. If there is a settlement before suit is filed or there is no civil action pending, then any party may petition a court of competent jurisdiction for a determination of the validity and amount of any claim of a lien.

(b) Where an entity licensed under chapter 432 or 432D possesses a lien or potential lien under this section:

- (1) The person whose settlement or judgment is subject to the lien or potential lien shall submit timely notice of a third-party claim, third-party recovery of damages, and related information to allow the

lienholder or potential lienholder to determine the extent of reimbursement required. A refusal to submit timely notice shall constitute a waiver by that person of section 431:13-103(a)(10). An entity shall be entitled to reimbursement of any benefits erroneously paid due to untimely notice of a third-party claim;

- (2) A reimbursement dispute shall be subject to binding arbitration in lieu of court proceedings if the party receiving recovery and the lienholder agree to submit the dispute to binding arbitration, and the process used shall be as agreed to by the parties in their binding arbitration agreement; and
- (3) In any proceeding under this section to determine the validity and amount of reimbursement, the court or arbitrator shall allow a lienholder or person claiming a lien sufficient time and opportunity for discovery and investigation.

For purposes of this subsection:

“Timely notice of a third-party claim” means a reasonable time after any written claim or demand for damages, settlement recovery, or insurance proceeds is made by or on behalf of the person.

“Third-party claim” means any tort claim for monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 432 or 432D.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

## ACT 229

S.B. NO. 1320

A Bill for an Act Relating to Antitrust.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 480, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§480- Class actions by private persons.** (a) A class action for claims for a violation of this chapter other than claims for unfair or deceptive acts or practices may be filed, and may be prosecuted on behalf of indirect purchasers by a person other than the attorney general as follows:

- (1) A filed copy of the complaint and all relevant supporting and exculpatory materials in possession of the proposed class representative or its counsel shall be served on the attorney general not later than seven days after filing of the complaint. The complaint shall be filed in camera, and shall not be served on the defendant until the court so orders. The complaint shall remain under seal for at least sixty days after service upon the attorney general of the complaint and all relevant supporting and exculpatory materials in possession of the proposed class representative or its counsel. The defendant named in the complaint shall not be required to respond to the complaint until twenty

days after the complaint has been unsealed and served upon the defendant in accordance with the Hawaii rules of civil procedure;

- (2) After service upon the attorney general of both the complaint and the relevant supporting and exculpatory materials in possession of the proposed class representative or its counsel, the attorney general may request the proposed class representative or its counsel to provide other materials deemed necessary by the attorney general;
- (3) The attorney general may move the court for extensions of the sixty-day period, which request shall be granted for good cause shown. The motion may be supported by affidavits or other submissions in camera;
- (4) The attorney general shall have the sole discretion to determine whether the State will proceed with the action or file its own action involving the same or similar claim or claims set forth in the complaint filed by the proposed class representative, which determination shall not be subject to review or appeal; and
- (5) On or before the expiration of the sixty-day period or any extensions obtained, the attorney general shall notify the court of its decision on whether the State will proceed with the action or file its own action involving the same or similar claim or claims set forth in the complaint filed by the proposed class representative:
  - (A) If the State proceeds with the action, the action shall be conducted by the attorney general and the seal shall be lifted;
  - (B) If the State files its own action involving the same or similar claim or claims set forth in the complaint filed by the proposed class representative, then the complaint filed by the proposed class representative shall be dismissed; and
  - (C) If the State declines or fails to timely elect to proceed with the action, or declines to file its own action involving the same or similar claim or claims set forth in the complaint filed by the proposed class representative, the proposed class representative shall have the right to conduct the action, and the complaint shall be unsealed and served upon the defendant by order of court. If the attorney general so requests, the State shall be served with copies of all pleadings filed in the action, and shall be supplied with copies of all deposition transcripts at the State's expense. When the proposed class representative proceeds with the action, the court without limiting the status and rights of such person may nevertheless permit the State to intervene at a later date upon showing of good cause, and upon such terms and conditions that the court deems just.

(b) This section shall not limit the rights of consumers to bring class actions against any person based on unfair or deceptive acts or practices declared unlawful by section 480-2."

SECTION 2. Section 480-2, Hawaii Revised Statutes, is amended to read as follows:

**"§480-2 Unfair competition, practices, declared unlawful.** (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

(b) In construing this section, the courts and the office of consumer protection shall give due consideration to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts interpreting section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

(c) No showing that the proceeding or suit would be in the public interest (as these terms are interpreted under section 5(b) of the Federal Trade Commission Act) is necessary in any action brought under this section.

(d) No person other than a consumer, the attorney general or the director of the office of consumer protection may bring an action based upon unfair or deceptive acts or practices declared unlawful by this section.

(e) Any person may bring an action based on unfair methods of competition declared unlawful by this section."

SECTION 3. Section 480-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The remedies provided in subsections (a) and (b) shall be applied in class action and de facto class action lawsuits or proceedings including actions brought ~~[in] on behalf of direct [purchasers, and actions brought in behalf of] or indirect purchasers [by the attorney general under section 480-14,];~~ provided that:

- (1) The minimum \$1,000 recovery provided in subsections (a) and (b) shall not apply in a class action or a de facto class action lawsuit;
- (2) In class actions or de facto class actions where both direct and indirect purchasers are involved, or where more than one class of indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim for compensatory damages that the illegal overcharge has been passed on or passed back to others who are themselves entitled to recover so as to avoid the duplication of recovery of compensatory damages;
- (3) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this chapter and deterrence from violation of its provisions;
- (4) In no event shall an indirect purchaser be awarded less than the full measure of compensatory damages attributable to the indirect purchaser;
- (5) In any lawsuit or lawsuits in which claims are asserted by both direct purchasers and indirect purchasers, the court is authorized to exercise its discretion in the apportionment of damages, and in the transfer and consolidation of cases to avoid the duplication of the recovery of damages and the multiplicity of suits, and in other respects to obtain substantial fairness;
- (6) In any case in which claims are being asserted by a part of the claimants in a court of this State and another part of the claimants in a court other than of this State, where the claims arise out of same or overlapping ~~[transaction or]~~ transactions, the court is authorized to take all steps reasonable and necessary to avoid duplication of recovery of damages and multiplicity of suits, and in other respects, to obtain substantial fairness;
- (7) In instances where ~~[the attorney general representing]~~ indirect purchasers ~~[files]~~ file an action and ~~[obtains]~~ obtain a judgment or settlement prior to the completion of a direct purchaser's action in courts other than this State, the court shall delay disbursement of the damages until such time as the direct purchaser's suits are resolved to either final judgment, consent decree or settlement, or in the absence of a direct purchaser's lawsuit in the courts other than this State by direct purchasers, the expiration of the statute of limitations, or in such manner that will minimize duplication of damages to the extent reasonable and



practicable, avoid multiplicity of suit and obtain substantial fairness; and

- (8) In the event damages ~~[obtained by the attorney general]~~ in a class action or de facto class action remain unclaimed by the direct or indirect purchasers, the class representative or the attorney general shall apply to the court and such funds shall escheat to the State upon showing that reasonable efforts made by the State to distribute the funds have been unsuccessful.”

SECTION 4. Section 480-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) ~~[No person other than the]~~ The attorney general of the State shall be authorized to bring a class action for indirect purchasers asserting claims under this chapter. The attorney general or the director of the office of consumer protection may bring a class action on behalf of consumers based on unfair or deceptive acts or practices declared unlawful by section 480-2. Actions brought under this ~~[section]~~ subsection shall be brought as parens patriae on behalf of natural persons residing in the State, to secure<sup>1</sup> compensatory damages for injuries sustained by such natural persons to their property by reason of any violation of this chapter.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

#### Notes

1. Prior to amendment “threefold” appeared here.
2. Edited pursuant to HRS §23G-16.5.

## ACT 230

S.B. NO. 2036

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-633.6, Hawaii Revised Statutes, is amended to read as follows:

**“~~[H]§302A-633.6~~ Allocations for coaches.** (a) Persons who serve as coaches for school activities shall be paid a portion or all of their allocation for their services, which shall increase by the same percentage as specified in a collectively bargained agreement negotiated for bargaining unit (5) and in force for that time period. ~~[Coaches covered by this section may request the department of budget and finance to dispense their allocation directly to the school to be used for the benefit of the coaches’ team.]~~

(b) The base stipend for coaches shall be the compensation amounts for coaches for the 2000-2001 school year. Effective July 1, 2003, the base stipend for all coaches of department of education activities shall be increased by fifty per cent for coaches who are employed by the department of education in a teaching capacity and by twenty-five per cent for coaches who are not employed by the department of education in a teaching capacity.

(c) Coaches covered by this section may choose to waive all or part of the coach's right or interest in the payment stipend. If a coach chooses to waive all or part of the stipend, the department of budget and finance shall disburse funds in the amount of the waiver directly to the school to be used for the benefit of the coach's team. No amount waived under this section shall be deemed to be or reported as income of the coach choosing to waive."

SECTION 2. The department of education shall provide for allocations for coaches for fiscal year 2002-2003, within available resources.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved June 28, 2002.)

## ACT 231

S.B. NO. 2075

A Bill for an Act Relating to Dental Hygienists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that access to dental services is an essential element in improving Hawaii's poor oral health. Hawaii's children have the worst tooth decay rate in the nation. Across all islands, oral health for children can be up to four times worse than the United States average.

The legislature finds that licensed dental hygienists can play a major role in improving Hawaii's oral health. These trained and certified professionals specialize in the education of dental hygiene and prevention of dental caries, and are currently regulated by the department of commerce and consumer affairs. However, because the existing law requires direct supervision of a licensed dental hygienist in a private practice, dental hygienists are precluded from performing essential dental services outside the dental office, without the physical presence of a licensed dentist.

While the existing law does provide for general supervision of licensed dental hygienists in limited circumstances where they are employed by a legally incorporated eleemosynary dental dispensary or infirmary, private school, or welfare center, or in any building owned or occupied by the State or any county, the availability of such licensed dental hygienists is too few to impact the necessary level of dental care in Hawaii. For example, there are only twelve dental hygienists employed by the department of health whose services reach only one-third of Hawaii's public schools every three years. By comparison, there are about six hundred sixty-seven licensed dental hygienists in Hawaii as of July 2000, the majority of whom are employed by dentists in private practice.

The legislature finds that there needs to be greater access to dental care not only for Hawaii's children, but to Hawaii's elderly and rural population who may not have the ability to visit a dental office. Licensed dental hygienists are trained and can help meet these dental needs. By enabling licensed dental hygienists to perform services under the general or direct supervision of a licensed dentist who is providing dental services in a public health setting, the number of dental hygienists available to service Hawaii's public schools, nursing homes, and rural areas will dramatically increase. This will enable dental hygienists to:

- (1) Conduct dental education;

- (2) Perform basic dental surveys;
- (3) Provide topical application of fluoride for persons who desire this application; and
- (4) Apply sealants as prescribed for persons who desire this application throughout Hawaii,

without having the dentist physically present to oversee these basic dental services.

The purpose of this Act is therefore to allow a licensed dental hygienist to operate under the general or direct supervision of any licensed dentist providing dental services in a public health setting. Public health settings include dental services in a legally incorporated eleemosynary dental dispensary or infirmary, private school, welfare center, hospital, nursing home, adult day care center or assisted living facility, mental institution, nonprofit health clinic, or the State or any county. In addition, this Act prohibits direct reimbursements to licensed dental hygienists. However, in the private practice of dentistry, this Act continues to require dental hygienists to be under the direct supervision of a licensed dentist, and continues to prohibit dental hygienists from establishing or operating separate care facilities that exclusively render dental hygiene services.

This Act also specifies the type of duties that may be performed by a licensed dental hygienist in a public health setting and requires that a licensed dentist determine that the facilities and equipment are suitable for rendering dental hygiene services.

SECTION 2. Section 447-3, Hawaii Revised Statutes, is amended to read as follows:

**“§447-3 Employment of and practice by dental hygienists.** (a) Any licensed dentist, legally incorporated eleemosynary dental dispensary or infirmary, private school, ~~or~~ welfare center, hospital, nursing home, adult day care center or assisted living facility, mental institution, nonprofit health clinic, or the State or any county, may employ licensed dental hygienists.

(b) Clinical dental hygiene may be practiced by a licensed dental hygienist. The practice of clinical dental hygiene is defined as the removal of hard and soft deposits and stains from the portion of the crown and root surfaces to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, the application of preventive chemical agents to the coronal surfaces of teeth, which chemical agents have been approved by the board of dental examiners, and the use of mouth washes ~~as are~~ approved by the board, but shall not include the performing of any repair work or the preparation thereof, or any other operation on the teeth or tissues of the mouth; provided that nothing ~~herein~~ in this subsection shall prohibit a dental hygienist from using or applying topically any chemical agent which has been approved in writing by the department of health for any of the purposes set forth in part V of chapter 321, and other procedures delegated by a dentist in accordance with the rules of the board of dental examiners.

In addition, a licensed dental hygienist may administer intra-oral infiltration local anesthesia and intra-oral block anesthesia under the direct supervision of a dentist after being certified by the board, and for those categories of intra-oral infiltration local anesthesia and intra-oral block anesthesia for which the licensed dental hygienist has been certified through a course of study meeting the requirements of this chapter.

(c) ~~The~~ A licensed dental hygienist may operate in the office of any licensed dentist, or legally incorporated eleemosynary dental dispensary or infirmary, private school, ~~or~~ welfare center, hospital, nursing home, adult day care center or assisted living facility, mental institution, nonprofit health clinic, or in any building owned or occupied by the State or any county, but only under the aforesaid

employment and under the direct or general supervision of a licensed dentist; provided that in the private practice of dentistry, the hygienist shall be under the direct supervision of a licensed dentist. No dental hygienist may establish or operate any separate care facility which exclusively renders dental hygiene services.

(d) A licensed dental hygienist may operate under the general or direct supervision of any licensed dentist providing dental services in a public health setting. As used in this subsection, "public health setting" includes dental services in a legally incorporated eleemosynary dental dispensary or infirmary, private school, welfare center, hospital, nursing home, adult day care center or assisted living facility, mental institution, nonprofit health clinic, or the State or any county. A licensed dental hygienist employed in a public health setting may perform dental education, dental screenings, and fluoride applications. Other permissible duties shall be pre-screened and authorized by a supervising licensed dentist, subject to the dentist's determination that the equipment and facilities are appropriate and satisfactory to carry out the recommended treatment plan. No direct reimbursements shall be provided to licensed dental hygienists."

SECTION 3. The board of dental examiners shall:

- (1) Evaluate the amendments made to section 447-3, Hawaii Revised Statutes, by this Act as to the safety and efficacy of enabling licensed dental hygienists to operate under the general or direct supervision of licensed dentists in public health settings; and
- (2) Report its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2007.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

## ACT 232

S.B. NO. 2112

A Bill for an Act Relating to Collective Bargaining.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 89-5, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsection (f) to read:

“(f) The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators[<sup>1</sup>~~members of fact-finding boards,~~] arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. Section 28-8.3 notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.”

2. By amending subsection (i) to read:

“(i) In addition to the powers and functions provided in other sections of this chapter, the board shall:

- (1) Establish procedures for, investigate, and resolve, any dispute concerning the designation of an appropriate bargaining unit and the application of section 89-6 to specific employees and positions;
- (2) Establish procedures for, resolve disputes with respect to, and supervise the conduct of, elections for the determination of employee representation;
- (3) Resolve controversies under this chapter;
- (4) Conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such actions with respect thereto as it deems necessary and proper;
- (5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions;
- (6) Determine qualifications and establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators~~[-members of fact-finding panels,]~~ or arbitrators;
- (7) Establish a fair and reasonable range of daily or hourly rates at which mediators~~[-members of fact-finding panels,]~~ and arbitrators on the lists established under paragraph (6) are to be compensated;
- (8) Conduct studies on problems pertaining to public employee-management relations, and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and employee organizations necessary to carry out its functions and responsibilities; make available to all concerned parties, including mediators~~[-members of fact-finding panels]~~ and arbitrators, statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiations;
- (9) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91; and
- (10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it.”

SECTION 2. Section 89-9, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Negotiations relating to contributions to the Hawaii public employees health fund shall be for the purpose of agreeing upon the amounts which the State and counties shall contribute under section 87-4, toward the payment of the costs for a health benefits plan, as defined in section 87-1(8), and group life insurance benefits, and the parties shall not be bound by the amounts contributed under prior agreements; provided that section 89-11 for the resolution of disputes by way of ~~[fact-finding or]~~ arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the Hawaii public employees health fund.”

SECTION 3. Section 89-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (c) and (d) to read:

“(c) An impasse over the terms of an initial or renewed agreement and the date of impasse shall be as follows:

- (1) More than ninety days after written notice by either party to initiate negotiations, either party may give written notice to the board that an impasse exists. The date on which the board receives notice shall be the date of impasse; and
- (2) If neither party gives written notice of an impasse and there are unresolved issues on ~~[April 15]~~ January 31 of ~~[an even-numbered year,]~~ a year in which the agreement is due to expire, the board shall declare on ~~[April 15]~~ January 31 that an impasse exists and ~~[April 16]~~ February 1 shall be the date of impasse.

(d) If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (5), teachers and other personnel of the department of education; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (7), faculty of the University of Hawaii and the community college system; bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; bargaining unit (9), registered professional nurses; or bargaining unit (13), professional and scientific employees, the board shall assist in the resolution of the impasse as follows:

- (1) Voluntary mediation. During the first twenty days of the date of impasse, either party may request the board to assist in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public from a list of qualified persons maintained by the board[-];
- ~~[(2) Fact-finding. If the impasse continues twenty days after the date of impasse, the board shall immediately appoint a fact-finding panel of not more than three members, representative of the public from a list of qualified persons maintained by the board. The fact-finding panel shall, in addition to powers delegated to it by the board, make recommendations for the resolution of the impasse pursuant to subsection (f). The fact-finding panel, acting by a majority of its members, shall transmit a report on its findings of fact and recommendations for the resolution of the impasse to both parties within sixty days after its appointment and notify the board of the date when it transmitted the fact-finding report.~~
- ~~(3) (2) Mediation. If the impasse continues [ten days after the transmittal of the fact-finding report,] more than twenty days, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse. [The parties shall make the fact-finding report available to the mediator or mediators.] The board may compel the parties to attend mediation, reasonable in time and frequency, until the fiftieth day of impasse. Thereafter, mediation shall be elective with the parties, subject to the approval of the board;~~
- ~~[(4) Fact-finding report made public. If the impasse continues sixty days after the transmittal of the fact-finding report, the parties shall make available to the board the fact-finding report,<sup>1</sup> which shall be released by the board for public information.~~
- (5) Submission of fact-finding report and response of the parties. If the impasse continues and the parties have not mutually agreed to submit

~~the dispute to arbitration for a decision by January 31 of an odd-numbered year, the employers shall submit on February 1 to the appropriate legislative bodies the employers' recommendations for the settlement of the impasse on all cost items together with the fact-finding report. The exclusive representative may submit to the appropriate legislative bodies its recommendations for the settlement of the cost items in impasse.]~~

- (3) Report of the board. The board shall promptly report to the appropriate legislative body or bodies the following circumstances as each occurs:
- (A) The date of a tentative agreement and whether the terms thereof are confidential between the parties;
  - (B) The ratification or failure or ratification of a tentative agreement;
  - (C) The signing of a tentative agreement;
  - (D) The terms of a tentative agreement; or
  - (E) On or about the fiftieth day of impasse, the failure of mediation.
- The parties shall provide the board with the requisite information; and
- (4) After the fiftieth day of impasse, the parties may resort to such other remedies that are not prohibited by any agreement pending between them, other provisions of this chapter, or any other law."

2. By amending subsection (f) to read:

~~"(f) [A fact-finding panel in making its report and an arbitrator or]~~ An arbitration panel in reaching its decision shall give weight to the following factors and shall include in its written report or decision an explanation of how the factors were taken into account:

- (1) The lawful authority of the employer, including the ability of the employer to use special funds only for authorized purposes or under specific circumstances because of limitations imposed by federal or state laws or county ordinances, as the case may be[-];
- (2) Stipulations of the parties[-];
- (3) The interests and welfare of the public[-];
- (4) The financial ability of the employer to meet these costs; provided that the employer's ability to fund cost items shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues[-];
- (5) The present and future general economic condition of the counties and the State[-];
- (6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services, and of other state and county employees in Hawaii[-];
- (7) The average consumer prices for goods or services, commonly known as the cost of living[-];
- (8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received[-];
- (9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings[-]; and
- (10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, ~~[fact-finding,]~~ arbitration, or otherwise between the parties, in the public service or in private employment."

3. By amending subsection (j) to read:

“(j) The costs and expenses for mediation [~~and fact-finding services~~] provided under subsection (d) or (e) shall be borne by the board. The costs and expenses for any other services performed by neutrals pursuant to mutual agreement of the parties and the costs for a neutral arbitrator shall be borne equally by the parties. All other costs incurred by either party in complying with this section, including the costs of its selected member on the arbitration panel, shall be borne by the party incurring them.”

SECTION 4. Section 89-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It shall be lawful for an employee, who is not prohibited from striking under subsection (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike under the following conditions:

- (1) The requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith;
- (2) The proceedings for the prevention of any prohibited practices have been exhausted;
- (3) The collective bargaining agreement and any extension of the agreement has expired; and
- (4) The exclusive representative has given a ten-day notice of intent to strike [to the board and], together with a statement of its position on all remaining issues in dispute, to the employer[: ] and the board.

Within three days of receipt of the notice of intent to strike, the employer shall submit its position on the remaining issues in dispute that are included in the statement transmitted by the exclusive representative with its notice of intent to strike. The board shall immediately release the information on the positions of the parties to the public.”

SECTION 5. Section 89-2, Hawaii Revised Statutes, is amended by deleting the definition of “fact finding”.

~~[““Fact-finding” means identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual differences by one or more neutral fact-finders, and the making of recommendations for settlement of the impasse.”]~~

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2002.

(Approved June 28, 2002.)

**Note**

1. So in original.

**ACT 233**

S.B. NO. 2127

A Bill for an Act Relating to the Employees’ Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there is an immediate need to:

- (1) Assist retirees living on fixed incomes to cope with the rising costs of living in Hawaii; and



- (2) Provide retirement with dignity for pensioners.

The purpose of this Act is to provide a one time, lump sum bonus of \$200 for each state and county retiree who is seventy years of age and older with at least twenty years of credited service as of June 30, 2002.

SECTION 2. Section 88-11, Hawaii Revised Statutes, is amended to read as follows:

**“§88-11 Bonus; pensioners’ special compensation; amounts available.**

Except as herein provided, every pension payable under the employees retirement system or payable pursuant to any law of the State, or by any county or independent public board or commission, shall be increased by a bonus for each month as follows:

- (1) Effective July 1, 1976, \$77.82 per month to those retirants and pensioners who had, before July 1, 1966, ten or more years of service; provided that any member who is retired because of physical or mental disability due to any injury or disease incurred while in the performance of the member’s duty as a public employee shall be entitled to receive the bonus payment without meeting the minimum service requirement;
- (2) Effective July 1, 1976, \$31.12 per month additional to the above bonus to those retirants or pensioners who retired before July 1, 1945;
- (3) Effective July 1, 1976, \$31.12 per month additional to the above bonus or bonuses to those retirants or pensioners who have had twenty-one or more years of service;
- (4) Effective July 1, 1976, if the pension as increased by the bonus or bonuses does not equal \$202.32 per month, the bonus shall be further increased by such sum, not in excess of \$31.12, as will bring the total of the pension and bonus to \$202.32 per month; provided that where the dependents of a deceased pensioner are receiving pension by reasons of the pensioner’s death, the total only of all amounts paid to the dependents shall be so increased, and the increase herein shall be shared by them in proportion to the respective amount of pension receivable by them exclusive of this increase;
- (5) In the case of any retirement allowance for service commencing after June 30, 1965, pursuant to paragraph (1) or (3) of section 88-74, the only bonus payable shall be in the amount by which the benefit payable under the paragraphs is less than the bonus as set forth above; provided that in no case shall a person who retires after June 30, 1965, receive less under the service and ordinary disability retirement system benefits, plus the bonus payable under this section than the person would have received if paragraph (5) had not been enacted;
- (6) Any provisions of this section to the contrary notwithstanding, there shall be paid to every person who on June 30, 1965, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus, which shall be paid in the following manner:
  - (A) On January 1, 1966, seven and one-half per cent of the retirement allowance or pension;
  - (B) On July 1, 1969, an additional ten per cent of the retirement allowance or pension;
  - (C) On July 1, 1970, an additional ten per cent of the retirement allowance or pension;

- (D) On July 1, 1973, an additional five and one-half per cent of the retirement allowance or pension; and
- (E) On July 1, 1976, an additional eight per cent of the retirement allowance or pension;
- (7) Any provision of this section to the contrary notwithstanding, there shall be paid to every person who retired between July 1, 1965, and June 30, 1970, and who, on June 30, 1974, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus which shall be paid in the following manner:
  - (A) On July 1, 1974, five and one-half per cent of the retirement allowance or pension; and
  - (B) On July 1, 1976, an additional eight per cent of the retirement allowance or pension;
- (8) Any other provision to the contrary notwithstanding, effective July 1, 1980, there shall be paid to every person who retired prior to July 1, 1975, and who on June 30, 1980, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus, which shall be paid in the following manner:
  - (A) \$4.50 a month for each year of the retirant's or pensioner's credited service, if the person retired prior to July 1, 1965;
  - (B) \$2.50 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1965, but prior to July 1, 1970; and
  - (C) \$1.00 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1970, but prior to July 1, 1975;

provided that if the retirant or pensioner had retired, returned to service, and again retired, the person's latest retirement date shall be considered as the person's date of retirement; provided further that no special cost of living bonus as provided for in this paragraph shall be paid to those retirants or pensioners who have eight or less years of credited service;
- (9) Any other provision to the contrary notwithstanding, effective July 1, 1984, there shall be paid to every person who retired after June 30, 1970, but prior to July 1, 1979, and who on June 30, 1984, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus, which shall be paid in the following manner:
  - (A) \$.50 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1970, but prior to July 1, 1975; and
  - (B) \$1.00 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1975, but prior to July 1, 1979;

provided that if the retirant or pensioner had retired, returned to service, and again retired, the person's latest retirement date shall be considered as the person's date of retirement; provided further that no special cost of living bonus as provided for in this paragraph shall be paid to those retirants or pensioners who have eight or less years of credited service;

[and]

- (10) Any other provision to the contrary notwithstanding, effective July 1, 1988, there shall be paid to every person who retired prior to July 1, 1982, and who on June 30, 1988, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus, which shall be paid in the following manner:
- (A) \$3.50 a month for each year of the retirant's or pensioner's credited service, if the person retired prior to July 1, 1965;
  - (B) \$2.50 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1965, but prior to July 1, 1970;
  - (C) \$1.50 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1970, but prior to July 1, 1975; and
  - (D) \$1.00 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1975, but prior to July 1, 1982;

provided that if the retirant or pensioner had retired, returned to service, and again retired, the person's latest retirement date shall be considered as the person's date of retirement; provided further that no special cost of living bonus as provided for in this paragraph shall be paid to those retirants or pensioners who have ten or less years of credited service[-];

- (11) Any other provision to the contrary notwithstanding, effective July 1, 1990, and each July 1, thereafter until June 30, 1999, bonuses shall be paid to retirants and pensioners with ten or more years of service or to their beneficiaries who are receiving a monthly benefit from the system, in accordance with this paragraph; provided that the requirement of ten or more years of service shall not apply in the case of a person who retires with less than ten years of service because of a service connected disability; and provided further that if the retirant or pensioner is currently receiving a larger bonus than what would be payable under this paragraph the retirant or pensioner shall continue to receive the bonus amount received on June 30, 1990, until the retirant's or pensioner's bonus calculated under this paragraph exceeds the June 30, 1990, bonus amount at which time the difference between the June 30, 1990, bonus and the bonus calculated under this paragraph would be payable.

The bonus amounts payable under this paragraph shall be based on years of retirement and shall be a cumulative amount to include all previous bonuses and shall not exceed:

- (A) \$1.25 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of five years by July 1 in the year in which the bonus is effective;
- (B) \$2.50 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of ten years by July 1 in the year in which the bonus is effective;
- (C) \$4.50 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of fifteen years by July 1 in the year in which the bonus is effective;
- (D) \$6.00 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of twenty years by July 1 in the year in which the bonus is effective;

- (B)<sup>1</sup> \$8.75 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of twenty-five years by July 1 in the year in which the bonus is effective;
- (F) \$10.50 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of thirty years by July 1 in the year in which the bonus is effective;
- (G) Any provision to the contrary notwithstanding, any retirant or pensioner with ten or more years of service who on July 1 of the year in which the bonus is being calculated has been retired a minimum of twenty years and whose current bonus amount exceeds the maximum specified in this paragraph shall nevertheless receive a pension increase of \$1.25 for each year of credited service.

For the purposes of this paragraph, if the retirant or pensioner had retired, returned to service, and again retired, the latest retirement date shall be considered as the date of retirement; and

- (12) Notwithstanding any other provision to the contrary, in fiscal year 2002-2003, each state and county retiree who is seventy years of age and older with at least twenty years of credited service as of June 30, 2002, shall receive a one time, lump sum bonus of \$200. Any lump sum bonus paid pursuant to this paragraph shall not be construed to increase a retirant's basic monthly pension accumulation or any other post retirement benefit provided under this chapter."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,465,400, or so much thereof as may be necessary for fiscal year 2002-2003, for deposit into the employees' retirement system's operating budget (BUF 141), to provide retirants who are age seventy or older and who have at least twenty years of credited service as of June 30, 2002, with a one-time, lump sum pension bonus of \$200 per retirant.

The sum appropriated shall be expended by the employees retirement system for the purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2002.

(Approved June 28, 2002.)

**Note**

- 1. Should be "(E)".

**ACT 234**

S.B. NO. 2698

A Bill for an Act Relating to Chapter 846E, Hawaii Revised Statutes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 846E-2, Hawaii Revised Statutes, is amended to read as follows:

**“§846E-2 Registration requirements.** (a) A sex offender shall register with the attorney general and comply with the provisions of this chapter for life.

(b) Registration information for each sex offender shall consist of a recent photograph, verified fingerprints, and a signed statement by the sex offender containing:

- (1) Name and all aliases used by the sex offender or under which the sex offender has been known and other identifying information, including date of birth, social security number, sex, race, height, weight, and hair and eye color;
- (2) The legal address and telephone number of the sex offender’s residence or mailing address, or any current, temporary address where the sex offender resides, and for each address how long the sex offender has resided there;
- (3) The legal address and telephone number where the sex offender is staying for a period of more than ten days, if other than the stated residence;
- (4) The future address and telephone number where the sex offender is planning to reside, if other than the stated residence;
- (5) Names and legal addresses of current and known future employers and the starting and ending dates of any such employment;
- (6) Names and legal addresses of current and known future educational institutions with which the sex offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- ~~[(6)]~~ (7) The year, make, model, color, and license number of all vehicles currently owned or operated by the sex offender;
- ~~[(7)]~~ (8) A summary of the criminal offenses against victims who were minors and sexually violent offenses for which the sex offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;
- ~~[(8)]~~ (9) A statement indicating whether the sex offender has received or is currently receiving treatment for mental abnormality or personality disorder;
- ~~[(9)]~~ (10) A statement indicating whether the sex offender is a United States citizen; and
- ~~[(10)]~~ (11) Any additional identifying information about the sex offender.’’

SECTION 2. Section 846E-3, Hawaii Revised Statutes, is amended to read as follows:

**“§846E-3 Access to registration information.** (a) Registration information shall be disclosed as follows:

- (1) The information shall be disclosed to law enforcement agencies for law enforcement purposes;
- (2) The information shall be disclosed to government agencies conducting confidential background checks;
- (3) The attorney general and any county police department shall release relevant information that is necessary to protect the public concerning a specific person required to register under this chapter; provided that the identity of a victim of an offense that requires registration under this chapter shall not be released.

(b) For purposes of this section, “relevant information that is necessary to protect the public” means:

- (1) Name and all aliases used by the sex offender or under which the sex offender has been known;
- (2) The street name and zip code where the sex offender resides and how long the sex offender has resided there;
- (3) The street name and zip code where the sex offender is staying for more than ten days, if other than the stated residence;
- (4) The future street name and zip code, if known, where the sex offender is planning to reside, if other than the stated residence;
- (5) The street name and zip code of the sex offender's current locations of employment;
- (6) Names and legal addresses of current and known future educational institutions with which the sex offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- [~~(6)~~] (7) The year, make, model, color, and license number of all vehicles currently owned or operated by the sex offender;
- [~~(7)~~] (8) A brief summary of the criminal offenses against victims who were minors and the sexually violent offenses for which the sex offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704; and
- [~~(8)~~] (9) A recent photograph of the sex offender.

(c) Relevant information that is necessary to protect the public shall be collected for purposes of making it available to the general public, and a sex offender shall have a diminished expectation of privacy in the information.

(d) Prior to public release of a sex offender's relevant information under subsection (f), the State shall petition the court for an order permitting its release. The petition shall be filed with the court in which the offense was prosecuted, or, in the case where the offense did not occur in the State, in the circuit of the sex offender's residence with the court for which jurisdiction would be proper had the offense occurred in this State. The State shall have the burden of proving, by a preponderance of the evidence, that the sex offender is required to register under this chapter. Proof by the State shall give rise to a presumption that public release of relevant information is necessary to protect the public. The sex offender shall be given the opportunity to present evidence to rebut the presumption and to show that the offender does not represent a threat to the community and that public release of relevant information is not necessary.

If the court determines that public release of relevant information is necessary to protect the public, the court shall issue an order for the release. The order shall set the time duration of public release of relevant information, which shall be for a minimum period of ten years, unless any one or more of the factors listed in paragraph (2), (4), (5), or (6) applies. If any one or more of these factors apply, then the time duration of the public release shall be for the life of the sex offender. Upon petition by the sex offender, the court may reconsider its determination of lifetime public release; provided that the sex offender may petition the court once every ten years. The court may relieve the sex offender from the determination of lifetime public release upon written findings that the offender does not present a threat to the community and that public release is no longer necessary.

The court in making its determination shall consider the following factors:

- (1) The offense involved the death or serious bodily injury of another person;
- (2) The offense resulted in sentencing under the terms of section 706-606.5, 706-660.2, or 706-661;
- (3) The offender has inexcusably failed to comply with terms and conditions of probation or parole;

- (4) The victim was twelve years of age or younger at the time of the offense;
  - (5) The offender either prior to or subsequent to the offense requiring registration under this chapter, has been convicted, found unfit to proceed, or acquitted due to a physical or mental disease, disorder, or defect, of a sexual offense or an offense against children, including all offenses occurring in other jurisdictions;
  - (6) The offender has been convicted, found unfit to proceed, or acquitted due to a physical or mental disease, disorder, or defect, of a sexual assault as defined in section 707-730(1)(a) or an offense that is comparable in another jurisdiction;
  - (7) The offender who has inexcusably failed to register as a sex offender or who is otherwise not in compliance with this chapter; and
  - (8) The offender has been convicted of any crime since the conviction requiring the offender's registration.
- (e) Subsections (d) and (f) shall not apply to offenders who have been convicted of a single misdemeanor sexual offense. Offenders convicted of multiple sexual offenses shall be subject to subsections (d) and (f).

~~[(d)]~~ (f) The release of relevant information that is necessary to protect the public shall be accomplished by public access to a file containing the relevant information on each registered sex offender, a copy of which shall be provided for inspection upon request at the Hawaii criminal justice data center and at one or more designated police stations in each county, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays excluding holidays. The chief of police and the attorney general shall provide the relevant information on sex offenders upon payment of reasonable fees. Relevant information on each registered sex offender may also be released from an electronic database maintained by the respective law enforcement agencies that is accessible to users through an interactive computer-based system."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2002.

(Approved June 28, 2002.)

## ACT 235

S.B. NO. 2883

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Article 9A of chapter 431, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and read as follows:

**“PART . LIMITED LINES MOTOR VEHICLE  
RENTAL COMPANY PRODUCER**

**§431:9A-A Definitions.** Unless specified otherwise, the following definitions shall be used in this part in addition to other definitions in chapter 431:

“Limited lines motor vehicle rental company producer” or “rental company producer” means a motor vehicle rental company that is licensed by the commissioner to solicit and sell insurance coverages only in connection with and which are incidental to the rental company’s business of renting motor vehicles.

“Motor vehicle rental agreement” or “rental agreement” means any written agreement setting forth the terms and conditions governing the use of a motor vehicle that is rented or leased from a rental company.

“Motor vehicle rental company” or “rental company” means any person that is primarily in the business of providing motor vehicles to the public under a motor vehicle rental agreement for a rental period not to exceed ninety days.

“Motor vehicle renter” means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a rental period not to exceed ninety days.

“Rental vehicle” or “vehicle” means a motor vehicle:

- (1) Of the private passenger type including passenger vans, minivans, and sport utility vehicles; or
  - (2) Of the cargo type, including cargo vans or pick up trucks with a gross vehicle weight of less than twenty-six thousand pounds,
- that do not require a commercial driver’s license for the operation of the vehicle.

**431:9A-B Requirements for license and renewal.** (a) Applicants seeking licensure under this part shall comply with applicable licensing requirements under chapter 431.

(b) The commissioner may issue a limited lines motor vehicle rental company producer license to a motor vehicle rental company; provided:

- (1) A motor vehicle rental company having a limited lines motor vehicle rental company producer’s license shall also authorize employees of the motor vehicle rental company to act individually on behalf of, and under the supervision of, the motor vehicle rental company in solicitation and sale of insurance coverages;
- (2) A limited lines motor vehicle rental company producer and its employees shall not advertise or otherwise represent themselves as licensed insurers, insurance agents, or insurance brokers;
- (3) A limited lines motor vehicle rental company producer may solicit or sell insurance at the rental office or by preselecting coverages in master, corporate, group rental, or individual agreements on policy forms approved by the commissioner in any of the following general categories:
  - (A) Personal accident insurance covering the risks of travel to the motor vehicle renter and other occupants of the rental vehicle for accident and health insurance covering accidental death or dismemberment and reimbursement for medical expenses resulting from an occurrence during the rental period;
  - (B) Liability insurance, uninsured motorist insurance, or underinsured motorist insurance covering the motor vehicle renter and other authorized drivers of the rental vehicle for liability and damage arising from the operation of the rental vehicle;



- (C) Personal effects insurance covering the motor vehicle renter and other vehicle occupants for the loss of or damage to personal effects that occur during the rental period;
  - (D) Roadside assistance and emergency sickness protection programs; and
  - (E) Incidental travel or vehicle related coverages which the motor vehicle rental company solicits or sells in connection with the rental of its vehicles;
- (4) The limited lines motor vehicle rental company producer shall have brochures or other written materials readily available for review and dissemination to prospective motor vehicle renters that:
- (A) Summarize clearly and correctly the material terms of coverages solicited or sold by the motor vehicle rental company producer, including the identity of the insurer;
  - (B) Discloses that the coverages solicited by the motor vehicle rental company producer may provide a duplication of coverages already provided by a renter's personal motor vehicle insurance policy or other sources of coverage;
  - (C) States that purchases by the motor vehicle renter of the kinds of coverages offered by the motor vehicle rental company producer is not required in order to rent a vehicle; and
  - (D) Describes the process for filing a claim if the renter elects to purchase coverages;
- (5) The motor vehicle rental company producer shall disclose in the motor vehicle rental agreement evidence of insurance coverages elected or declined by the motor vehicle renter;
- (6) The motor vehicle rental company producer shall conduct training programs which shall be approved by the commissioner for its employees who solicit and sell the rental company producer's insurance coverages;
- (7) The motor vehicle rental company producer shall not be required to hold funds collected as payments for insurance in a separate trust account; and
- (8) The motor vehicle rental company producer shall comply with all provisions of chapter 437D.
- (c) The commissioner may prescribe, approve, or furnish forms calling for any information that the commissioner deems proper in connection with the application for or extension of these limited licenses.
- (d) The limited license shall not be issued until all applicable licensing fees have been paid. The commissioner shall collect in advance of issuance of the limited license the following fees:
- (1) Issuance of limited line motor vehicle rental company producer's license: \$1,000; and
  - (2) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of license: \$600 a year for all services (including extension of the license) for a limited line motor vehicle company producer;

The services referred to in paragraphs (1) and (2) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

SECTION 2. Chapter 437D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§437D-A Offers or sales of collision insurance by lessors or limited line motor vehicle rental company producers.** (a) The provisions in this chapter relating to or otherwise regulating the offer or sale of collision damage waivers shall apply to the offer or sale of collision insurance by lessors or limited line motor vehicle rental company producers.

(b) For purposes of this chapter, collision insurance means coverage to pay a specified amount to or on behalf of the lessee for claims by the lessor relating to loss of or damage to the rented vehicle. The definitions of collision insurance and collision damage waiver stated in this chapter shall apply only to this chapter. No definition of insurance in this chapter or in any other statute shall be deemed to include collision damage waiver as defined in this chapter.”

SECTION 3. Section 437D-16, Hawaii Revised Statutes, is amended to read as follows:

**“[§437D-16]] Application of insurance laws.** None of the provisions of this chapter shall apply to the issuance of collision insurance underwritten by an insurer authorized to transact property and casualty business in this State~~[-];~~ provided that the insurer is not a lessor as defined in this chapter or a limited line motor vehicle rental company producer as defined in 431:9A-A.”

SECTION 4. In codifying the sections of the new part added by this Act to Article 9A of chapter 431 and the new section to Chapter 437D, Hawaii Revised Statutes, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated and referred to in this Act. The revisor shall also designate into appropriate parts the existing sections of Article 9A of Chapter 431, Hawaii Revised Statutes.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on November 1, 2002.

(Approved June 28, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 236**

S.B. NO. 2885

A Bill for an Act Relating To Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§237- Segregation of gross income, etc., on records and in returns of telecommunications businesses.** (a) Notwithstanding section 237-14, any person engaged in the business of selling interstate or foreign common carrier telecommunications services taxable under section 237-13(6)(D), or any public utility defined in section 269-1 having gross income from the conveyance or transmission of telephone or telegraph messages, or from the furnishing of facilities for the transmission

of intelligence by electricity, may reasonably segregate in the person's returns, based on its books and records that are kept in the normal course of business:

- (1) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under this chapter from the parts subject to taxation under chapter 239; and
- (2) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under one provision of chapter 237 from the parts subject to taxation under any other provision of chapter 237.

(b) The segregation shall be deemed valid so long as the method of segregation does not conflict with rules subsequently adopted by the department pursuant to this section."

SECTION 2. Chapter 239, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§239- Segregation of gross income, etc., on records and in returns of telecommunications businesses.** (a) Notwithstanding section 239-4, any person engaged in the business of selling interstate or foreign common carrier telecommunications services taxable under section 237-13(6)(D), or any public utility defined in section 269-1 having gross income from the conveyance or transmission of telephone or telegraph messages, or from the furnishing of facilities for the transmission of intelligence by electricity, may reasonably segregate in the person's returns, based on its books and records that are kept in the normal course of business:

- (1) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under this chapter from the parts subject to taxation under chapter 237; and
- (2) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under one provision of chapter 239 from the parts subject to taxation under any other provision of chapter 239.

(b) The segregation shall be deemed valid so long as the method of segregation does not conflict with rules subsequently adopted by the department pursuant to this section."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall apply to gross income, gross proceeds of sales, and value of products after July 1, 2002.

(Approved June 28, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 237**

S.B. NO. 3028

A Bill for an Act Relating to the Regulation of Warrantors of Vehicle Protection Products.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER VEHICLE PROTECTION PRODUCT WARRANTORS**

**§ -1 Definitions.** As used in this chapter:

“Commissioner” means the insurance commissioner.

“Consumer” means a person in this State who purchases or otherwise possesses a vehicle protection product.

“Department” means the department of commerce and consumer affairs.

“Reimbursement insurance policy” means a policy of insurance issued to a warrantor to:

- (1) Provide reimbursement to the warrantor under the terms of the insured vehicle protection product issued or sold by the warrantor; and
- (2) Pay on behalf of the warrantor, in the event of the warrantor’s nonperformance, all covered obligations incurred by the warrantor under the terms of the insured vehicle protection product issued or sold by the warrantor.

“Seller” means a person engaged in the business of offering a vehicle protection product for sale to a consumer.

“Vehicle identification number” means a serial number or identification mark of any vehicle established by the manufacturer for the purpose of identifying the vehicle.

“Vehicle protection product” means a product or system, which includes a written warranty, that is:

- (1) Installed or applied to a vehicle; and
- (2) Designed to prevent loss or damage to a vehicle from a specific cause.

“Warrantor” means a person named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer.

**§ -2 Applicability of chapter.** (a) This chapter shall apply only to vehicle protection products delivered to consumers in the State of Hawaii, the warranties of which require the warrantor, to the extent agreed on as part of the warranty, to pay expenses to the consumer for the loss of or damage to the vehicle.

(b) A vehicle protection product which includes the application of a serial number or identification mark to a component or part of the vehicle shall include the vehicle identification number of the vehicle to which the product is applied. This chapter shall not apply to such a product if the product does not include the respective vehicle identification number.

(c) Loss of or damage to the vehicle under subsection (a) may also include unreimbursed incidental expenses that may be incurred by the consumer, including expenses for a replacement vehicle, temporary vehicle rental expenses, and registration expenses for replacement vehicles.

**§ -3 Powers and duties of the commissioner.** (a) The commissioner may adopt rules under chapter 91 as necessary to implement this chapter.

(b) The commissioner may conduct investigations of warrantors or other persons as reasonably necessary to enforce this chapter and to protect consumers in this State. On request of the commissioner, a warrantor shall make the warrantor’s records maintained under section -8 regarding vehicle protection products sold by the warrantor available to the department as necessary to enable the department to reasonably determine compliance with this chapter.

**§ -4 Registration requirements.** (a) Before conducting business in this State or issuing any warranty, a warrantor shall register with the commissioner on a form prescribed by the commissioner, and shall pay to the commissioner a fee as

provided under section 431:7-101. A person who sells or solicits a vehicle protection product, but who is not a warrantor, shall not be required to register with the commissioner as a warrantor.

(b) Warrantor registration records shall be updated annually and shall contain the following information:

- (1) The address of the principal office of the warrantor;
- (2) The name and address of the warrantor's agent for the service of process in this State if other than the provider;
- (3) The identities of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business;
- (4) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this State;
- (5) A copy of each warranty form the warrantor proposes to use in this State; and
- (6) A statement that the warrantor is in compliance with the financial responsibility requirements of section -5 and that details how the warrantor intends to meet the requirements, and proof of compliance with the requirements.

(c) The marketing, selling, offering for sale, issuing, making, proposing to make, and administering of vehicle protection products shall be exempt from:

- (1) Chapter 481X; and
- (2) The insurance laws of this State.

(d) The following contracts and agreements shall be exempt from this chapter and shall only be subject to other statutes and laws that specifically apply to them:

- (1) Warranties or guarantees, other than those provided as part of a vehicle protection product; and
- (2) Service contracts regulated by chapter 481X.

(e) A seller shall not be deemed to be a warrantor unless, in addition to acting as a seller, the person is named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer.

**§ -5 Financial security requirements.** (a) To ensure the adequate performance of a warrantor's obligations to a consumer, each warrantor shall comply with financial security requirements by insuring each vehicle protection product warranty issued by the warrantor under a reimbursement insurance policy issued by an insurer authorized to engage in the business of insurance in this State or under a surplus lines insurance policy issued by an insurer eligible to place coverage in this State as regulated under the insurance laws of this State.

(b) The department may not require any other financial security requirements or financial standards for warrantors. Warrantors shall not be subject to any other financial security requirements under state law.

**§ -6 Reimbursement insurance policy.** (a) In order for a warrantor to comply with section -5(a), the warrantor's insurance policy shall state that:

- (1) The insurer that issued the policy shall reimburse or pay on behalf of the warrantor any covered amounts the warrantor is legally obligated to pay or shall provide the service that the warrantor is legally obligated to perform according to the warrantor's obligations under the insured vehicle protection product issued or sold by the warrantor; and
- (2) If the covered amounts are not paid or the covered service is not provided by the warrantor to a consumer before the sixty-first day after the date the consumer provides proof of loss, payment shall be made or

the service shall be provided directly from the reimbursement insurer to the consumer.

(b) An insurer who issues a reimbursement insurance policy under this chapter may not cancel the policy until the insurer delivers to the warrantor a written notice of cancellation that complies with the requirements adopted for those notices under the insurance laws of this State.

The warrantor shall forward a copy of the cancellation notice to the commissioner not later than the fifteenth business day after the date the notice is delivered to the warrantor.

(c) The cancellation of a reimbursement insurance policy shall not reduce the insurer's responsibility for vehicle protection products issued by the warrantor and insured under the policy before the date of the cancellation.

(d) For purposes of this section, a warrantor shall be considered to be the representative of the insurer who issues the reimbursement insurance policy for purposes of obligating the insurer to consumers in accordance with the vehicle protection product and this chapter.

**§ -7 General warrantor operation requirements.** (a) A warrantor may appoint a designee to be responsible for any or all of the administration of vehicle protection products and for compliance with this chapter. The designee shall be liable to the extent the warrantor would be liable for violations of this chapter committed by the designee.

(b) A vehicle protection product may not be issued, sold, or offered for sale in this State unless at the time of purchase the warrantor provides to the consumer:

- (1) A copy of the vehicle protection product warranty; or
- (2) A receipt for, or other written evidence of, the purchase of the vehicle protection product.

(c) A warrantor who complies with subsection (b)(2), within thirty days after the date of purchase, shall provide to the consumer a copy of the vehicle protection product warranty.

(d) A warrantor shall indemnify a seller who pays or is obligated to pay a consumer any money the warrantor is obligated to pay under the terms of the vehicle protection product warranty, including damages, reasonable attorney's fees, and costs.

**§ -8 Warrantor records.** (a) Each warrantor shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The warrantor's records shall include:

- (1) A copy of the warranty for each unique form of vehicle protection product sold;
- (2) The name and address of each consumer;
- (3) A list of the locations where the warrantor's vehicle protection products are marketed, sold, or offered for sale; and
- (4) Files that contain at least the dates and descriptions of payments to consumers related to the vehicle protection product.

(b) Except as provided by subsection (d), each warrantor shall retain all records required under subsection (a) until at least the first anniversary of the expiration date of the obligations under the vehicle protection product warranty.

(c) The records required to be maintained under this section may be maintained in an electronic medium pursuant to section 489E-12. If a record is maintained in a format other than paper, the warrantor shall reformat the record into a legible paper copy at the request of the department.

(d) A warrantor who discontinues business in this State shall maintain the warrantor's records until ten years after the date of the last sale of a covered motor vehicle protection product.

**§ -9 Required disclosures.** (a) Each vehicle protection product warranty marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this State shall be written, printed, or typed, in clear, understandable, and easy to read language, and shall disclose the applicable requirements set forth in this section.

(b) The obligations of a vehicle protection product warranty that are insured under a reimbursement insurance policy shall contain a statement substantially similar to the following:

"Obligations of the warrantor under this vehicle protection product are insured under a reimbursement insurance policy."

(c) The vehicle protection product warranty shall state the name and address of the insurer and state that if a covered service is not provided by the warrantor before the sixty-first day after the date the consumer provides proof of loss, the consumer may apply for reimbursement directly to the vehicle protection product's reimbursement insurance company.

(d) Each vehicle protection product warranty shall state the name, address, and phone number of the warrantor. All warrantors shall report to the department before the thirty-first day after the date of any change in the information required to be provided in this subsection.

(e) Each vehicle protection product warranty shall identify any administrator, if different from the warrantor, the vehicle protection product seller, and the consumer, if the name of the consumer has been provided by the consumer. The identities of those persons shall not be required to be preprinted on the warranty and may be added to the warranty at the time of sale.

(f) Each vehicle protection product warranty shall state the product's purchase price, or the warrantor's suggested purchase price, and the terms under which the product is sold. The purchase price shall not be required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale.

(g) Each vehicle protection product warranty shall:

- (1) Specify the products and services to be provided and any limitations, exceptions, or exclusions;
- (2) Specify any restrictions governing the transferability of the vehicle protection product;
- (3) State the duties of the consumer, including any duty to protect against any further damage and any requirement to follow the warranty's instructions;
- (4) State the name, mailing address, and telephone number of the department; and
- (5) Include a statement that unresolved complaints concerning a registered warrantor or questions concerning the regulation of a warrantor may be addressed to the department.

(h) The requirements of subsection (g)(4) and (5) may be stamped on the vehicle protection product warranty.

**§ -10 Cancellation of warranty.** (a) Each vehicle protection product warranty shall state the terms, restrictions, or conditions if any, governing cancellation of the warranty by the warrantor before the expiration date of the warranty. Cancellation may only occur under this section for:

- (1) Nonpayment by the consumer for the vehicle protection product;

- (2) A material misrepresentation by the consumer to the seller or warrantor;
  - (3) Fraud by the consumer; or
  - (4) A substantial breach of duties by the consumer relating to the warranty.
- (b) A warrantor shall mail written notice of cancellation to the consumer at the last address of the consumer contained in the records of the warrantor at least thirty days prior to the effective date of the cancellation. The notice shall state the effective date of the cancellation and the reason for the cancellation.

**§ -11 Limitations on use of warrantor's name.** (a) A warrantor shall not use:

- (1) In its name, the word "casualty", "surety", "insurance", or "mutual" or any other word descriptive of the casualty, insurance, or surety business; or
  - (2) A name deceptively similar to the name or description of any insurance company, surety corporation, or other warrantor.
- (b) A warrantor may use the word "guaranty" or a similar word in the warrantor's name.

**§ -12 Prohibited acts.** (a) A warrantor or a warrantor's representative, in the warrantor's vehicle protection product warranty or in an advertisement or literature for the warranty, may not:

- (1) Make, permit, or cause to be made any false or misleading statement; or
  - (2) Deliberately omit a material statement that would be considered misleading if omitted.
- (b) A warrantor may not require, as a condition of sale or financing, that a retail purchaser of a motor vehicle purchase a vehicle protection product that is not installed on the motor vehicle at the time of sale.

**§ -13 Enforcement.** (a) The commissioner may take any action necessary or appropriate to enforce this chapter, and the rules adopted and orders issued hereunder, which is consistent with the provisions of this chapter. The commissioner may conduct investigations and examinations of warrantors, administrators, insurers, or other persons. If a warrantor has violated this chapter, or rules or orders under this chapter, the commissioner may issue an order:

- (1) Requiring a person to cease and desist from violating this chapter or rules or orders under this chapter;
  - (2) Prohibiting a person from selling or offering for sale vehicle protection product warranties in violation of this chapter;
  - (3) Imposing a civil penalty on a person, in addition to attorneys' fees and costs incurred in the investigation and prosecution of a violation of this chapter, as follows:
    - (A) For persons acting negligently or recklessly, not more than \$5,000 per violation; or
    - (B) For persons acting intentionally or knowingly, not more than \$10,000 per violation.

The terms "negligently", "recklessly", "knowingly", and "intentionally" shall have the meanings provided in section 702-206; or
  - (4) Any combination of the foregoing, as deemed appropriate by the commissioner.
- (b) A person aggrieved by an order under this section may request a hearing before the commissioner, conducted subject to chapter 91. The hearing request shall be filed with the commissioner within twenty days of the effective date of the commissioner's order. Upon filing of a hearing request, the order shall be suspended



from its effective date, until completion of the hearing and final decision of the commissioner. At the hearing, the commissioner shall have the burden of proof to show that the order is justified.

(c) The commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to remedy threatened or existing violations of this chapter, rules established pursuant to this chapter, or orders of the commissioner. An action filed under this section may also seek restitution on behalf of persons aggrieved by a violation of this chapter, rules established pursuant to this chapter, or orders of the commissioner.”

SECTION 2. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) The commissioner shall collect in advance the following fees:
- (1) Certificate of authority: Issuance ..... \$900
  - (2) Organization of domestic insurers and affiliated corporations:
    - (A) Application and all other papers required for issuance of solicitation permit, filing ..... \$1,500
    - (B) Issuance of solicitation permit ..... \$150
  - (3) General agent’s license:
    - (A) Issuance, regular license. .... \$75
    - (B) Issuance, temporary license. .... \$75
  - (4) Subagent’s license:
    - (A) Issuance, regular license ..... \$75
    - (B) Issuance, temporary license ..... \$75
  - (5) Nonresident agent’s or broker’s license: Issuance ..... \$60
  - (6) Solicitor’s license: Issuance ..... \$60
  - (7) Independent adjuster’s license: Issuance ..... \$60
  - (8) Public adjuster’s license: Issuance ..... \$60
  - (9) Workers’ compensation claims adjuster’s limited license: Issuance ..... \$60
  - (10) Independent bill reviewer’s license: Issuance ..... \$80
  - (11) Limited license issued pursuant to section 431:9-214(c): Issuance ..... \$60
  - (12) Managing general agent’s license: Issuance ..... \$75
  - (13) Reinsurance intermediary’s license: Issuance ..... \$75
  - (14) Surplus line broker’s license: Issuance ..... \$150
  - (15) Service contract provider’s registration: Issuance ..... \$75
  - (16) Approved course provider certificate: Issuance ..... \$100
  - (17) Approved continuing education course certificate: Issuance ..... \$30
  - (18) Examination for license: For each examination, a fee to be established by the commissioner[:.]
  - (19) Vehicle protection product warrantor’s registration: Issuance ..... \$75.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$75 per year for all services (including extension of the license) for a regularly licensed general agent;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed subagent;
- (4) \$45 per year for all services (including extension of the license) for a regularly licensed nonresident agent or broker;

- (5) \$30 per year for all services (including extension of the license) for a regularly licensed solicitor;
- (6) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (7) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (8) \$45 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster;
- (9) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (10) \$45 per year for all services (including extension of the license) for a limited license issued pursuant to section 431:9-214(c);
- (11) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (12) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (13) \$45 per year for all services (including extension of the license) for a licensed surplus line broker;
- (14) \$75 per year for all services (including renewal of registration) for a service contract provider;
- (15) \$65 per year for all services (including extension of the certificate) for an approved course provider; ~~and~~
- (16) \$20 per year for all services (including extension of the certificate) for an approved continuing education course[-]; and
- (17) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor.

The services referred to in paragraphs (1) to ~~(16)~~ (17) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

SECTION 3. A person who would be regulated under section 2 of this Act shall not be required to comply with its provisions until January 1, 2003, but may elect to do so before January 1, 2003. The failure of a warrantor or other person to comply with this Act or otherwise to administer a vehicle protection product in the manner required by this Act before January 1, 2003, shall not be admissible in any court, administrative, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper.

SECTION 4. This Act shall apply only to a vehicle protection product purchased on or after January 1, 2003; it shall not apply to a vehicle protection product purchased before January 1, 2003, and transferred to a subsequent consumer on or after January 1, 2003.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1, 2003.

(Approved June 28, 2002.)

A Bill for an Act Relating to HIV Testing for Sexual Offenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that thousands of people are sexually assaulted annually and that the transmission of HIV infection occurs about two times per one thousand sexual contacts. Those who work with victims of sexual assault estimate a higher infection rate because the violent nature of sexual assaults increases the chances of transmission. The legislature also finds that a growing number of states, currently twenty-one, are passing legislation mandating HIV testing of those charged or convicted of sexual assaults.

An HIV test will detect the presence of HIV infection if the attacker contracted the virus as early as six months prior to the test. Victims fearing infection from an encounter or assault need to ascertain whether the attackers are HIV positive. Current law does not adequately address the anxiety victims face. Current law provides for testing of those convicted of sexual assault only if the court orders it, but not all perpetrators charged with sexual assault are convicted. Victims whose perpetrators are not convicted do not have an opportunity to either gain some measure of peace from knowing that their perpetrator did not carry the HIV virus or learn that their assaulter carried the HIV virus and take actions to address that fact, including self testing and medication to combat the virus.

Current law also fails to include sex offenses other than sexual assault that could lead to HIV infection, such as incest and child abuse. The benefits of alleviating anxiety or addressing the possibility of infection are no less for the victims of these crimes.

The purpose of this Act is to require HIV testing of individuals charged with sexual assault crimes and to address the aforementioned shortcomings of current law.

SECTION 2. Section 325-16, Hawaii Revised Statutes, is amended to read as follows:

**“§325-16 Informed consent for testing or disclosure.** (a) No health care provider, blood bank, plasma center, or any other public or private agency, institution, or individual may subject a person’s body fluids or tissue to a test for the presence of human immunodeficiency virus (HIV) infection unless the subject of the test first provides informed written consent to the testing. Any person in this State whose body fluids or tissue are subject to a test for the presence of HIV infection shall be afforded the opportunity to receive HIV counseling by the party ordering or requesting that the test be performed and shall be afforded the opportunity to obtain the test results. The counseling provided shall be consistent with guidelines established by the department. The opportunity to receive counseling shall be afforded both prior to obtaining a sample for HIV testing and upon disclosure of the test results, regardless of the serostatus of the individual tested, except that testing conducted pursuant to subsection (b)(1) and (2) shall be exempted from the counseling requirements of this subsection.

(b) Consent to testing is not required for any of the following:

- (1) A health care provider or organ donor center that procures, processes, distributes, or uses human body parts donated for scientific purposes, without obtaining consent, may test for the presence of HIV in order to assure medical acceptability of the gift for the purpose intended;

- (2) The department, laboratories and research facilities, health care providers, blood banks, plasma centers, and educational institutions may subject any body fluids or tissue to be used in research to a test for HIV infection if the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;
- (3) Anonymous testing carried out at HIV test sites established by the department; provided that informed oral consent is obtained;
- (4) Testing of body fluids or tissue ordered by a third party, so long as that third party, including but not limited to an insurance company, employer, or school, obtains the informed written consent of the person to be tested authorizing the release of the test results to the third party, and transmits a signed copy of the written informed consent to the health provider prior to any release of the requested test results to the third party;
- (5) Informed consent is not required where the patient is unable to give consent and it is determined by the patient's treating physician that the patient's HIV status is necessary to make a diagnosis or determine an appropriate course of treatment for the patient. The patient shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to this paragraph, and the patient shall be provided the opportunity to obtain the test results and appropriate counseling;
- (6) A treating physician may order an HIV test without the patient's informed consent if the physician has determined that the patient is incapable of giving consent prior to the rendering of treatment and when there is reason to believe that the safety of a health care worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible HIV infection. The availability and quality of health care services shall not be compromised based on the findings and testing performed pursuant to this paragraph. The costs of any testing performed shall be borne by the health care provider and may not be claimed against the patient or the patient's health care insurer. The patient and the health care worker shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph, and the patient and the health care worker shall be provided the opportunity to obtain the test results and appropriate counseling; ~~and~~
- (7) A person who has been ~~convicted;~~ charged, or a juvenile who has been ~~adjudicated;~~ charged, pursuant to ~~[sections]~~ section 707-730, 707-731, [or] 707-732(1)(a), 707-733.5, or 707-741 shall be tested to determine the person's HIV status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17~~[-]; and~~
- (8) A person who has been convicted, or a juvenile who has been adjudicated, pursuant to section 707-730, 707-731, 707-732(1)(a), 707-733.5, or 707-741 shall be tested to determine the person's HIV status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17.
- (c) Confidentiality. The confidentiality of all records held pursuant to this section is governed by section 325-101.
- (d) Civil penalty. Any person or institution who wilfully violates any provision of this section shall be fined not less than \$1,000 nor more than \$10,000 for each violation plus reasonable court costs and attorney's fees as determined by the court, which penalty and costs shall be paid to the person whose records were

released. This subsection shall not be construed as limiting the right of any person or persons to recover actual damages.

~~[(e) Good faith exception. No health care provider, blood bank, plasma center, or any other public or private agency, institution, or individual, which, in good faith, provides results of any test for the presence of HIV infection to a specified third party as the result and in response to an informed written consent by the person to be tested, shall be in violation of confidentiality requirements pursuant to this section and governed by section 325-101 if the test results later prove to be false or otherwise defective.~~

~~(f)~~(e) The department shall adopt rules, pursuant to chapter 91, to establish procedures and standards to implement this section.”

SECTION 3. Section 325-16.5, Hawaii Revised Statutes, is amended to read as follows:

**“[E]§325-16.5[] Counseling and testing of sexual assault victims; testing of sex offenders upon request of victim.** (a) Any sexual assault victim, or the parent or guardian of a minor or incapacitated victim, shall be informed as soon as practicable after the assault, of the availability of human immunodeficiency virus (HIV) testing for the victim, the availability of counseling for the victim, and the right of the victim to request that the person ~~[convicted of a sexual assault]~~ charged with an offense listed in section 325-16(b)(7), involving the victim,<sup>1</sup> be tested for HIV. The victim, or the parent or guardian of a minor or incapacitated victim, and the ~~[convicted]~~ charged person shall be provided HIV counseling prior to being tested, and follow-up counseling at the time the results are presented to the victim or the parent or guardian of a minor or incapacitated victim and the ~~[convicted]~~ charged person.

Any sexual assault victim, or the parent or guardian of a minor or incapacitated victim, shall be informed as soon as practicable after a conviction, of the availability of human immunodeficiency virus (HIV) testing for the victim, the availability of counseling for the victim, and the right of the victim to demand that the person convicted of an offense listed in section 325-16(b)(8), involving the victim, be tested for HIV. The victim, or the parent or guardian of a minor or incapacitated victim, and the convicted person shall be provided HIV counseling prior to being tested, and follow-up counseling at the time the results are presented to the victim or the parent or guardian of a minor or incapacitated victim and the convicted person.

(b) The court shall order a ~~[convicted]~~ charged person to be tested for the etiological agent for the human immunodeficiency virus (HIV) if the victim has requested that the person be tested for HIV. The following procedures shall be used when ordering the test:

- (1) The victim or the parent or guardian of a minor or incapacitated victim shall be informed, as soon as practicable, of the right to request that the ~~[convicted]~~ charged person be tested for HIV, the availability of department of health funded HIV testing for the victim, and the availability of HIV counseling for the victim. If the victim or parent or guardian of a minor or incapacitated victim requests the HIV status of a ~~[convicted]~~ charged person, the victim, parent, or guardian shall designate a physician or a certified HIV counselor to receive the test result, provide counseling, and notify the victim, parent, or guardian of the test result;
- (2) If the victim or parent or guardian of a minor or incapacitated victim requests, in writing, that the ~~[convicted]~~ charged person be tested for HIV, the court shall ~~[seek the consent of the convicted person to voluntarily submit to an HIV test;~~

- (3) If the convicted person does not voluntarily consent to take an HIV test or fails to take an HIV test, the court shall] order the person to submit to an HIV test[:] subject to a showing of probable cause. Notwithstanding any law to the contrary, for purposes of determining probable cause for this order, a court may consider all relevant facts indicating whether HIV transmission is demonstrated by the preponderance of the evidence. The proceedings to determine whether or not such an order is issued shall be in camera.<sup>2</sup>

Whenever practicable, blood samples taken for HIV testing under this section shall be taken in conjunction with samples taken for DNA testing under section 706-603; provided that the HIV test results shall not be disclosed to any person other than the physician or HIV counselor designated to receive the results by the victim or the parent or the guardian of a minor or incapacitated victim.

The HIV test results shall remain otherwise confidential and the court may fashion orders to effectuate the prohibition against dissemination of the information. The adult probation division shall not disclose the HIV test results obtained under this section through any report. The court shall not take into account the HIV test results obtained under this section for any purpose, including determination of pretrial release of defendants, trial and sentencing. The Hawaii paroling authority shall not take into account the HIV test results obtained under this section for any purpose, including determination of minimum terms of incarceration and granting or denying of parole.

(c) The court shall order a convicted person to be tested for the etiological agent for HIV. The procedures used when ordering the test shall be as follows:

- (1) The victim or the parent or guardian of a minor or incapacitated victim shall be informed, as soon as practicable, of the court order mandating the convicted person be tested for HIV, the availability of department of health funded HIV testing for the victim, and the availability of HIV counseling for the victim. The victim, parent, or guardian shall designate a physician or a certified HIV counselor to receive the test results of the convicted person, provide counseling, and notify the victim, parent, or guardian of the test results; and
- (2) The proceedings to issue such an order shall be in camera.

Whenever practicable, blood samples taken for HIV testing under this section shall be taken in conjunction with samples taken for DNA testing under section 706-603; provided that the HIV test results shall not be disclosed to any person other than the physician or HIV counselor designated to receive the results by the victim or the parent or the guardian of a minor or incapacitated victim.

The HIV test results shall remain otherwise confidential and the court may fashion orders to effectuate the prohibition against dissemination of the information. The adult probation division shall not disclose the HIV test results obtained under this section through any report. The court shall not take into account the HIV test results obtained under this section for any purpose, including determination of pretrial release of defendants, trial and sentencing. The Hawaii paroling authority shall not take into account the HIV test results obtained under this section for any purpose, including determination of minimum terms of incarceration and granting or denying of parole.

[(e)] (d) The results of the charged or convicted person's HIV test shall be forwarded by the laboratory to the designated physician or HIV counselor, and shall be released by the physician, in consultation with the department of health or the HIV counselor, to the charged or convicted person and the victim or the parent or guardian of a minor or incapacitated victim. Prior to such release, the victim or the parent or guardian shall be required to sign a notice of HIV status disclosure

advising them of the confidentiality provisions regarding HIV test results and the penalties for unlawful disclosure pursuant to section 325-101.

~~[(d)]~~ (e) No person authorized under this paragraph to withdraw blood or assist in the performance of the HIV test, or any medical facility where the blood is drawn or tested that has been ordered by the court to withdraw or test blood, shall be liable in any civil or criminal action if the test is performed in a reasonable manner according to generally accepted medical practices.

~~[(e)]~~ (f) As used in this section, unless the context requires otherwise:

“Charged person” means a person who has been charged with an offense under section 707-730, 707-731, 707-732(1)(a), 707-733.5, or 707-741, including a juvenile charged of such an offense. A person is charged when a formal complaint, information, or indictment has been accepted by the court.

“Convicted person” means a person who has been convicted of an offense under [sections] section 707-730, 707-731, ~~[or]~~ 707-732(1)(a), 707-733.5, or 707-741, including a juvenile adjudicated of such an offense. A person is convicted when a verdict or adjudication has been rendered by a judge or jury, or a plea of guilty or nolo contendere has been accepted by the court.

“HIV counseling” means HIV counseling which conforms to the guidelines of the department of health or the Centers for Disease Control and Prevention, and includes referral for appropriate health care and support services.

“HIV counselor” means any person who has been trained and certified in HIV counseling by the department of health or the Centers for Disease Control and Prevention and who is not a victim counselor employed by or a volunteer with any law enforcement agency.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

#### Notes

1. Comma should be underscored.
2. Period should be underscored.

## ACT 239

H.B. NO. 2216

A Bill for an Act Relating to Mental Health, Alcohol, and Drug Abuse.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 202, Session Laws of Hawaii 1988, as amended by Act 111, Session Laws of Hawaii 1994, as amended by Act 78, Session Laws of Hawaii 1998, as amended by Act 18, Session Laws of Hawaii 1999, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect on July 1, 1989; provided that insurance or health or service plan contracts shall be amended to reflect the provisions required under this Act at the first anniversary date following the effective date, but no later than July 1, 1990; provided further that section -6 shall take effect upon the approval of this Act[; and provided further that this Act shall be repealed on July 1, 2002].”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect on June 29, 2002.

(Approved June 28, 2002.)

## ACT 240

S.B. NO. 2234

A Bill for an Act Relating to Sexual Exploitation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that current Hawaii law does not address the exploitation of a minor whereby a minor is used in a fashion similar to a trade commodity in providing various lascivious services that are not covered by prostitution or sexual abuse laws. This exploitation is part of the overall sexual exploitation that is known as commercial sexual exploitation (CSE), and includes nude dancing, unlicensed massage, exotic dancing, and pornographic performances.

The legislature further finds that substantiation of this growing problem is extensively documented in a recent study of CSE done by the University of Pennsylvania, School of Social Work. This report, entitled “The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico”, (Richard Estes and Neil Weiner, September 10, 2001, funded in part by the National Institute of Justice of the United States Department of Justice), states that escort services, massage services, private dancing, nude dancing, lap dancing, and similar sexually provocative activities are used to organize or lure girls into prostitution and pornography.

The report’s recommendations include targeting adult sexual exploiters of children for punishment and increasing the penalties associated with CSE. The report states that “[s]ome persons involved in child trafficking were quite explicit about the ‘cost/benefit’ ledger sheets they mentally drafted; on balance, involvement in the [CSE]...was judged to be more profitable and less risky than involvement in felony-level crimes. This imbalance is an incentive to make one’s illicit money from CSE rather than drugs or other felony crimes.” Notably, the report states that offenders must be given an unequivocal message that commercial sexual exploitation is impermissible, and that the victimized children must be empowered to report incidents to law enforcement and human service agencies.

Therefore, the legislature finds that the establishment and enforcement of significant criminal penalties, including securing convictions for class B felonies, are necessary to ensure that the sexual exploitation of children is severely punished and discouraged, and to assure the young victims of these deplorable acts that harsh penalties will be imposed upon those who participate or profit in their exploitation. The community and the State have a responsibility and obligation to protect minors from being mere sexual objects to be bought, sold, traded, or rented for sexual purposes and profit.

The purpose of this Act is to prohibit the commercial sexual exploitation of minors in activities consisting of exotic or nude dancing, erotic or nude massage services, and pornographic performances.

SECTION 2. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

**“§707- Sexual exploitation of a minor.** (1) A person commits the offense of sexual exploitation of a minor if that person:

- (a) Intentionally, knowingly, or recklessly engages or retains the services of a minor for money or property in consideration to:



- (i) Provide, to patrons or customers of a public establishment, exotic or nude dancing or entertainment;
- (ii) Provide exotic or nude dancing or entertainment in a private club or event; provided that a patron or customer of a private club or event shall be deemed to engage or retain the services of a minor for purposes of this section; or
- (iii) Provide erotic or nude massage services if the person massaged or performing the massage is nude; or
- (b) Entices customers through advertising that offers services of a minor in any manner prohibited under paragraph (a).
- (2) As used in this section:
  - “Exotic dancing” or “exotic entertaining” means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in the art of nude dancing.
  - “Minor” means any person less than eighteen years old.
  - “Nude” means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola.
  - “Property” means personal property, real property, evidence of debt or contract, or any kind of article of value.
- (3) Sexual exploitation of a minor is a class B felony.
- (4) A conviction under this section shall subject the defendant to section 712A-4, if applicable.”

SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§712-A Failure to maintain age verification records of sexual performers.** (1) A person commits the offense of failure to maintain age verification records of sexual performers if the person knowingly produces any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depiction’s made after June 30, 2002, of sexual conduct and:

- (a) Knowingly fails to create and maintain age verification records for each sexual performer;
  - (b) Knowingly makes or causes to be made any false entry into the age verification records of sexual performers required by this section; or
  - (c) Knowingly fails to produce the age verification records of sexual performers required by this section, upon request by a law enforcement officer for the purpose of verifying the age of a sexual performer.
- (2) Failure to maintain age verification records of sexual performers is a class C felony.

**§712-B Failure to maintain age verification records of sexually exploited individuals.** (1) A person commits the offense of failure to maintain age verification records of sexually exploited individuals if, with the intent to profit therefrom, the person knowingly provides sexually exploited individuals to patrons or customers of a public establishment or provides sexually exploited individuals to a private club or event, and the person:

- (a) Knowingly fails to create and maintain age verification records for each sexually exploited individual;

- (b) Knowingly makes or causes to be made any false entry into the age verification records of sexually exploited individuals required by this section; or
  - (c) Knowingly fails to produce the age verification records of sexually exploited individuals required by this section upon request by a law enforcement officer for the purpose of verifying the age of a sexually exploited individual.
- (2) Failure to maintain age verification records of sexually exploited individuals is a class C felony.

**§712-C Failure to affix information disclosing location of age verification records of sexual performers.** (1) A person commits the offense of failure to affix information disclosing location of age verification records of sexual performers if the person knowingly produces any pornographic book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depiction's made after June 30, 2002, of sexual conduct and fails to affix to each copy a statement describing where any records required by section 712-A with respect to all performers depicted in that copy of the matter may be located, including the current address and telephone number of the custodian of those records.

(2) If the person to whom any record-keeping requirement of section 712-A applies is an organization, the affixed information required under subsection (1) shall include the name, title, and business address of the individual employed by the organization who is responsible for maintaining the records required by section 712-A.

(3) Failure to affix information disclosing the location of age verification records of sexual performers is a class C felony.

**§712-D Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers.**

(1) A person commits the offense of disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers if the person knowingly disseminates, sells, or otherwise transfers, or offers for sale or transfer, any book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more visual depiction's made after June 30, 2002, of sexual conduct, and that does not have affixed thereto a statement describing where the age verification records required by section 712-A may be located; provided that this section shall not be construed to impose a duty upon any persons to determine the accuracy of the contents of the affixed statement or of the records required to be kept at that location.

(2) Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers is a misdemeanor."

SECTION 4. Section 712-1210, Hawaii Revised Statutes, is amended by adding ten new definitions to be appropriately inserted and to read as follows:

"Age verification records of sexual performers" means individually identifiable records pertaining to every sexual performer portrayed in a visual depiction of sexual conduct, which include:

- (1) Each performer's name and date of birth, as ascertained by the producer's personal examination of a performer's valid driver's license, official state identification card, or passport;
- (2) A certified copy of each performer's valid driver's license, official state identification card, or passport; and

- (3) Any name ever used by each performer including, but not limited to, maiden name, alias, nickname, stage name, or professional name.

“Age verification records of sexually exploited individuals” means individually identifiable records pertaining to every sexually exploited individual provided to patrons or customers of a public establishment or in a private club or event. Such records shall include:

- (1) Each sexually exploited individual’s name and date of birth, as ascertained by an examination of the individual’s valid driver’s license, official state identification card, or passport;
- (2) A certified copy of each sexually exploited individual’s driver’s license, official state identification card, or passport; and
- (3) Any name ever used by each sexually exploited individual including but not limited to maiden name, aliases, nicknames, stage names, or professional names.

“Erotic or nude massager” means a nude person providing massage services with or without a license.

“Exotic or nude dancer” means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in nude dancing.

“Intent to profit” means the intent to obtain monetary gain.

“Nude” means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals or any portion of the female breast below the top of the areola.

“Produces” means to manufacture or publish any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity that does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted.

“Sexual conduct” has the same meaning as in section 712-1200(2).

“Sexually exploited individuals” means erotic or nude massagers and exotic or nude dancers.

“Sexual performer” includes any person portrayed in a pornographic visual depiction engaging in, or assisting another person to engage in, sexual conduct.”

SECTION 5. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

**“§712A-4 Covered offenses.** Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, sexual exploitation of a minor, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and

- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.’’

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. If any provision of this Act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this Act, and to this end the provisions of this Act are severable.

SECTION 8. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section number for the letters used in designating the new sections in this Act.

SECTION 9. Each county prosecutor shall submit a report of the numbers of arrests, charges, convictions, and dismissals under the new offenses created pursuant to this Act to the Legislature prior to the convening of the 2004 regular session.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect upon its approval; provided that sections 2 and 5 shall be repealed on July 1, 2004, and section 712A-4, Hawaii Revised Statutes, shall be reenacted as it read on the day before the effective date of this Act.

(Approved June 28, 2002.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 241**

S.B. NO. 2898

A Bill for an Act Relating to Cave Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that caves are unique landforms that often contain irreplaceable resources of immense cultural, spiritual, aesthetic, and scientific value. These cultural and spiritual resources, including human burials and other evidence of native Hawaiian use and their associated traditions, are in need of greater protection. The preservation of these cultural resources is paramount for their survival for future generations, and they are also a valuable part of Hawaii’s heritage. The biological and geological resources include unique subterranean ecosystems inhabited by specialized organisms, the associated native flora and fauna living within entrances, mineral and bedrock formations, and paleontological or fossil deposits. Fossil deposits, which include remains of plants, animals, and surface debris preserved in caves, provide a unique record of the past climate and biota of the islands. Since all of these resources are vulnerable to destruction, their protection is warranted.

The purpose of this Act is to protect unique cultural and natural resources found in caves. This Act is not intended to limit other laws, such as chapters 6E, 340E, and 342D of the Hawaii Revised Statutes, which address historic preservation and water quality.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER PROTECTION OF CAVES**

**§ -1 Definitions.** As used in this chapter:

“Board” means the board of land and natural resources.

“Cave” means any naturally occurring void, cavity, recess, or system of interconnected passages large enough for human entry, occurring beneath the surface of the earth or within a cliff or ledge, including the cave resources therein, whether or not an entrance exists or is natural or artificial, and that is of archeological, geological, biological, or cultural significance. The term includes such forms as a lava tube, natural pit, sinkhole, underwater cave, or other feature that is an extension of the entrance.

“Cave life” means any living native plant, animal, fungus, or microorganism occurring naturally in caves or in cave entrances or entrance pits.

“Cave resource” means any material or substance occurring in caves, such as native animal life, native plant life, evidence of past human use over fifty years old, and tangible and intangible attributes associated with cultural traditions over fifty years old, paleontological deposits, sediments, minerals, speleogens, and speleothems. This includes historic properties as defined in chapter 6E.

“Commercial entry” means an activity undertaken to exhibit a cave for which compensation is received by any person for goods, services, or both, rendered to customers or participants in that use or activity. Commercial entry includes activities whose base of operations are outside the boundaries of the premises, or provide transportation to or from the premises. Any person receiving compensation in conjunction with a use or activity who seeks to qualify as non-commercial shall have the burden of establishing to the satisfaction of the department that the fee or charge is strictly a sharing of actual expenses of the use or activity. A not-for-profit organization that charges only a nominal fee to cover administrative costs and conducts a use or activity at a frequency or magnitude that does not significantly contribute to the degradation of the cave and its resources is not conducting a commercial entry.

“Construction context” means all permitted land-altering activities necessary to construct any and all manner of improvements on the surface of a property including but not limited to foundations, basements, roads, and buildings. The term also means all permitted land-altering activities necessary to construct subsurface tunnels for highways and utilities.

“Department” means the department of land and natural resources.

“Educational purposes” means entrance into a cave by faculty or staff and students of recognized educational institutions for the purpose of education relating to some aspect of the cave, including but not restricted to cave geology, mineralogy, hydrology, biology, archaeology, paleontology, management, and hazards.

“Gate” means any structure or device located to limit, control, or prohibit access to, or entry to, any portion of a cave.

“Owner” means the persons who hold title to or are in possession of the land on or under which a cave is located, or the persons’ lessee or agent. The term also

includes an agency that holds title to, manages, or controls public land on or under which a cave is located.

“Paleontological deposit” means any remains or fossils of life forms or surface debris that are over fifty years of age and provide a record of past climates and biota.

“Person” shall be as defined in section 1-19.

“Scientific purposes” means research, or exploration, or both, conducted by persons affiliated with recognized scientific organizations with the intent to advance knowledge and to publish the results of exploration or research in an appropriate medium.

“Speleogen” means relief features on the walls, ceiling, or floor of any cave.

“Speleothem” means any secondary natural mineral formation or deposit occurring in a cave, including any stalactite, stalagmite, helictite, cave flower, flowstone, concretion, drapery, rimstone, or formation of clay or other sediment.

**§ -2 Prohibitions.** (a) It shall be unlawful for any person to intentionally, knowingly, or recklessly break, break off, crack, carve upon, write, burn, or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave, or the cave resources within the cave, whether attached or broken, including speleothems, speleogens, and sedimentary deposits, without the owner’s written permission being first obtained.

(b) It shall be unlawful for any person to break, force, tamper with, or otherwise disturb a gate to any cave, even though entrance thereto may not be gained, without the owner’s permission being first obtained.

(c) It shall be unlawful for any person to remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of this chapter.

(d) It shall be unlawful for any person to take, appropriate, excavate, injure, destroy, or alter any paleontological deposit, which may be found in a cave without the owner’s written permission being first obtained.

(e) This section shall not apply to caves inadvertently encountered within the normal course of a construction context; provided that any cave protection measures imposed through the environmental review process under chapter 343, Hawaii Revised Statutes, or any land use permit conditions shall be followed.

**§ -3 Pollution.** (a) It shall be unlawful for any person to store, dump, dispose of, or otherwise place any refuse, garbage, dead animals, sewage, litter, or toxic substances in any cave or cave entrance; provided that:

- (1) Any cesspool or leach field that is otherwise legal and existing on the effective date of this section shall continue to be lawful as a non-conforming use or facility;
- (2) The nonconforming use or facility shall not be expanded or reconstructed; and
- (3) New septic systems may be installed in proximity to caves; provided they use solid tanks and surface leach fields so as not to permit sewage to flow into the cave and otherwise conform to existing laws and regulations.

(b) It shall be unlawful to intentionally, knowingly, or recklessly burn within a cave or cave entrance any material that produces any smoke, engine exhaust, or gas substantially harmful to any naturally occurring organisms in any cave; provided that this shall not apply to caves encountered within the normal course of a construction context.

**§ -4 Disturbance of native organisms.** (a) It shall be unlawful for any person to intentionally, knowingly, or recklessly remove, kill, or substantially harm

any native or endemic organisms within any cave except as provided by a scientific permit obtained from the appropriate agency. This is not intended to restrict normal fishing and gathering in accordance with existing laws.

(b) This section shall not apply to caves encountered within the normal course of a construction context; provided that any cave protection mitigative measures disclosed through environmental review under chapter 343 and land use permitting processes shall be adhered to.

(c) This section shall not in any way prohibit or constrain surface activities on the land above a cave.

§ -5 **Sale.** It shall be unlawful for any person to sell or offer for sale speleothems and speleogens removed from caves.

§ -6 **Commercial entry.** (a) Any person allowing or establishing commercial entry to a cave shall obtain from the board a permit to open the cave for public entry. The department shall charge a reasonable permit processing fee and adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section.

(b) Any person that receives compensation in conjunction with a use or activity and seeks to be excluded from the permit requirement under subsection (a) shall have the burden of establishing to the satisfaction of the department that its use or activity does not constitute a commercial entry under this chapter.

(c) Commercial entry to caves shall be limited to operations in place at the time of the passage of this Act; provided the operations are in compliance with all applicable state and county statutes, ordinances, and rules. No new operations may be established until the adoption of rules by the department to implement this section.

(d) Any person allowing commercial entry at the time of the passage of this Act shall file a declaration of the person's use with the department within sixty days of the enactment of this Act. Existing operations, as recognized by the department through the declaration, within one year of the adoption of rules by the department, shall conform to the rules and all applicable state and county statutes, ordinances, and rules.

§ -7 **Access.** No person may enter or traverse a cave, or any segment thereof, without the property owner's prior written consent.

§ -8 **Burial discovery.** Anyone traversing a cave who discovers a burial site shall immediately cease their activity and leave the cave. The discovery shall be reported as soon as possible to the department. The department shall follow the procedures described in section 6E-43.6.

§ -9 **Liability.** (a) An owner of a cave who either directly or indirectly invites or permits without charge any person to use the cave for educational, native Hawaiian cultural, or scientific purposes does not:

- (1) Extend any assurance that the premises are safe for any purpose;
- (2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
- (3) Assume responsibility for, or incur liability for, any injury to person or property caused by an act of omission or commission of those persons; or
- (4) Assume responsibility for, or incur liability for, any injury to any person or persons who enter the premises in response to an injured educational, native Hawaiian cultural, or scientific user.

(b) Nothing in this section shall be construed to:

- (1) Create a duty of care or ground of liability for injury to persons or property; or
  - (2) Relieve any person using the cave of another for educational, native Hawaiian cultural, or scientific purposes from any obligation which the person may have in the absence of this section to exercise care in the person's use of that cave and in the person's activities therein, or from the legal consequences of failure to employ such care; or
  - (3) Limit the effect of chapter 520.
- (c) Nothing in this section limits in any way any liability which otherwise exists:
- (1) For wilful or malicious failure to guard or warn against a dangerous condition, use, or structure which the owner knowingly creates or perpetuates and for wilful or malicious failure to guard or warn against a dangerous activity which the owner knowingly pursues or perpetuates; and
  - (2) For injury suffered in any case where the owner of a cave charges a fee to any person who enters or uses the cave for educational, native Hawaiian cultural, or scientific purposes, except that in the case of land leased to the State or a political subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

**§ -10 Confidentiality.** (a) Where the department determines in consultation with the owner that dissemination of knowledge of cave location or resources could be detrimental to their protection, then the government information on the cave location and sensitive resources shall be kept confidential.

(b) Notwithstanding subsection (a), where an owner still believes that dissemination of knowledge of cave location or resources could be detrimental to their protection, then the department shall keep all government information on the cave location and sensitive cave resources confidential.

**§ -11 General administrative penalties.** (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation, with respect to a violation of this chapter or any rule adopted or permit issued in accordance with this chapter, may:

- (1) Set, pursuant to subsection (b), charge, and collect administrative fines or bring legal action to recover administrative fees and costs, as documented by receipts or affidavit, including attorneys' fees and costs; or
- (2) Bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, payment for damages, or for the cost to correct damages, resulting from violation of this chapter or any rule adopted or permit issued in accordance with this chapter.

(b) Administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$10,000 for each separate offense;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$15,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$30,000.

**§ -12 Criminal penalties.** (a) In addition to any other penalties, any person who intentionally, knowingly, or recklessly violates this chapter, any rule adopted pursuant to this chapter, or the terms and conditions of any permit issued in



accordance with this chapter shall be guilty of a petty misdemeanor and shall be fined not less than:

- (1) \$1,000 for a first offense; and
- (2) \$1,500 for any subsequent offense.

(b) Intentional, knowing, or reckless damage, destruction, removal, taking, sale, or illegal possession of each specimen of cave resource shall be subject to a fine of not less than:

- (1) \$1,000 for a first offense; and
- (2) \$1,500 for any subsequent offense.

Each day of continued violation under this chapter shall constitute a distinct and separate offense for which the violator may be punished. Equipment used by the violator in the course or furtherance of the violation shall be subject to seizure and disposition by the State without compensation to its owner or owners. Penalties under this section shall not limit the imposition of penalties pursuant to chapter 6E.

(c) The fines specified in this section shall not be suspended or waived.

**§ -13 Penalties cumulative.** (a) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against the person.

(b) Penalties under this section shall not limit the imposition of penalties pursuant to chapter 6E.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

**Note**

1. So in original.

**ACT 242**

H.B. NO. 1730

A Bill for an Act Relating to Drivers Education Fund Underwriters Fee.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:10C-115, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers education fund underwriters fee of [~~\$2~~] \$3 a year on each motor vehicle insured by each insurer or self-insurer. This fee is due and payable on an annual basis by means and at a time to be determined by the commissioner.”

2. By amending subsection (c) to read:

“(c) The commissioner shall allocate the fees deposited for each fiscal year in the following manner:

- (1) ~~[Fifty per cent]~~ \$1 per registration to the commissioner to be expended for the operation of the drivers education program provided in section 286-128(d); and
- (2) ~~[Fifty per cent]~~ \$2 per registration to the director of commerce and consumer affairs for:
  - (A) The drivers education program administered by the department of education for high school students; and
  - (B) The traffic safety education program established and administered by the department of education pursuant to section 302A-417.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved June 28, 2002.)

## ACT 243

H.B. NO. 2788

A Bill for an Act Relating to State Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in article VII, section 13 of the state constitution which states: “Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance,” the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in article VII, section 13 of the state constitution, which states in part: “General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance.” Article VII, section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including “reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year” and bonds constituting instruments of indebted-

ness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under said article VII, section 13.

- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2001-2002 and estimated for each fiscal year from 2002-2003 to 2004-2005, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
1998-1999	\$3,254,256,686	
1999-2000	3,256,883,851	
2000-2001	3,412,365,536	
2001-2002	3,468,246,452	\$611,949,541
2002-2003	3,560,542,047	625,145,577
2003-2004	3,713,841,000	643,871,165
2004-2005	(not applicable)	662,462,152

For fiscal years 2001-2002, 2002-2003, 2003-2004, and 2004-2005, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1998-1999, 1999-2000, and 2000-2001 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2001, dated November 29, 2001. The net general fund revenues for fiscal years 2001-2002 to 2004-2005 are estimates, based on general fund revenue estimates made as of March 14, 2002, by the council on revenues, the body assigned by article VII, section 7 of the state constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by article VII, section 13 of the state constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 2002 is as follows for fiscal year 2002-2003 to fiscal year 2008-2009.

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2002-2003	\$406,269,318
2003-2004	330,057,652
2004-2005	332,420,674
2005-2006	421,342,829
2006-2007	457,739,602
2007-2008	449,304,384
2008-2009	439,291,596

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit

generally continues to decline each year from fiscal year 2009-2010 to fiscal year 2021-2022 when the final installment of \$50,084,975 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$238,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the state constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of February 28, 2002, adjusted for (1) appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 259, Session Laws of Hawaii 2001, to be expended in fiscal year 2002-2003; (2) appropriations to be funded by general obligation bonds as provided in Act 1, Special Session Laws of Hawaii 2001 to be expended in fiscal year 2002-2003; (3) reductions in appropriations to be funded by general obligation bonds as provided in Act 3, Third Special Session Laws of Hawaii 2001 to be expended in fiscal year 2002-2003; and (4) lapses provided in House Bill No. 1800, H.D. 1, S.D. 1, C.D. 1,<sup>1</sup> (the Supplemental Appropriations Act of 2002) and House Bill No. 2300, H.D. 2, S.D. 1, C.D. 1<sup>2</sup> (the Judiciary Supplemental Appropriations Act of 2002) amounting to \$51,595,198, the total amount of authorized but unissued general obligation bonds is \$980,428,846. The total amount of general obligation bonds authorized by this Act is \$514,121,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized in this Act is \$1,494,549,846. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$238,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the state constitution.
- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2001-2002, 2002-2003, 2003-2004, and 2004-2005, the State proposed to issue \$200,000,000 in general obligation bonds for the remainder of fiscal year 2001-2002, \$300,000,000 the first half of fiscal year 2002-2003, \$300,000,000 during the second half of fiscal year 2002-2003, \$250,000,000 during the first half of fiscal year 2003-2004, \$200,000,000 during the second half of fiscal year 2003-2004, \$150,000,000 during the first half of fiscal year 2004-2005, and \$100,000,000 during the second half of fiscal year 2004-2005. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fourth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to

issue during the fiscal years 2001-2002 to 2003-2004 is \$1,250,000,000. An additional \$250,000,000 is proposed to be issued in fiscal year 2004-2005. The total amount of \$1,250,000,000 which is proposed to be issued through fiscal year 2003-2004 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$1,494,549,846, as reported in paragraph (4), except for \$244,549,846. It is assumed that the appropriations to which an additional \$244,549,846 in bond issuance needs to be applied will have been encumbered as of June 30, 2004. The \$250,000,000, which is proposed to be issued in fiscal year 2004-2005, will be sufficient to meet the requirements of the June 30, 2004 encumbrances in the amount of \$244,549,846. The amount of assumed encumbrances as of June 30, 2004 is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds which is proposed to be issued by June 30, 2004, and the amount of June 30, 2004 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2004-2005, the legislature finds that in the aggregate, the amount of bonds which is proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds, which are excludable from the amount of each proposed bond issued because:
  - (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
  - (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 4.30 per cent for the ten years from fiscal year 2002-2003 to fiscal year 2011-2012. For the purpose of this declaration, the assumption is made that one per cent of each bond issue will be excludable from the debt limit, an assumption that the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding

general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under article VII, section 13 of the state constitution for the fiscal years 2001-2002, 2002-2003, 2003-2004, and 2004-2005 are as follows:

<u>Fiscal year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13, of the State Constitution</u>
2001-2002	\$3,642,644,421
2002-2003	4,016,408,993
2003-2004	4,301,002,827
2004-2005	4,376,892,219

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to article VII, section 13 of the state constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 5.5 per cent through fiscal year 2002-2003 and at an interest rate of 6.0 per cent thereafter, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
Remainder FY 2001-2002 \$198,000,000	611,919,541	476,366,603 (2006-2007)
1 <sup>st</sup> half FY 2002-2003 \$297,000,000	625,145,577	503,399,103 (2006-2007)

2 <sup>nd</sup> half FY 2002-2003	\$297,000,000	625,145,577	530,734,103 (2006-2007)
1 <sup>st</sup> half FY 2003-2004	\$247,500,000	643,871,165	545,931,822 (2007-2008)
2 <sup>nd</sup> half FY 2003-2004	\$198,000,000	643,871,165	564,831,822 (2007-2008)
1 <sup>st</sup> half FY 2004-2005	\$148,500,000	662,462,152	573,741,822 (2007-2008)
2 <sup>nd</sup> half FY 2004-2005	\$99,000,000	662,462,152	579,681,822 (2007-2008)
(9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.			

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 1800, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the Supplemental Appropriations Act of 2002) and House Bill No. 2300, H.D. 2, S.D. 1, C.D. 1,<sup>2</sup> (the Judiciary Supplemental Appropriations Act of 2002), passed by this regular session of 2002, designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds so issued shall not exceed \$514,121,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

#### Notes

1. Act 177.
2. Act 91.

## ACT 244

S.B. NO. 2068

A Bill for an Act Relating to School Repair And Maintenance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In the regular session of 2001, the legislature passed Act 309, which established the Hawaii school repair and maintenance fund as a separate fund of Helping Hands Hawaii, a Hawaii nonprofit organization. The Act authorized Helping Hands Hawaii to expend moneys from the fund in the form of either grants to organizations or contracts with private vendors for the repair and maintenance of public schools in Hawaii. The legislature intended that the public and private sectors work together as partners in securing contributions for the fund and that Helping Hands Hawaii, through its project, Hawaii 3R's, assist the public and private sectors in reviewing and investigating all potential funding sources.

The legislature finds, however, that some professionals in the construction industry have indicated their reluctance to contribute their services to Hawaii 3R's because of their fear of being held liable for damages. These professionals believe that their work, which is performed either pro bono or at a reduced cost, should be viewed as that of a volunteer, or a "good Samaritan", and that they should not be held responsible for damages. Moreover, although many of these professionals have their own insurance, they are concerned that if a lawsuit or claim is filed against them, they may incur additional costs in the form of higher premiums, even if they are found not at fault.

Accordingly, the purpose of this Act is to afford volunteer status to providers of construction or project-related professional services that contract with Helping Hands Hawaii through Hawaii 3R's to perform pro bono or reduced-cost services for the repair and maintenance of public schools in Hawaii, as of January 1, 2002.

SECTION 2. Act 309, Session Laws of Hawaii 2001, is amended by adding a new section to be appropriately designated and to read as follows:

**"SECTION \_\_. Providers of construction or project-related professional services for the repair and maintenance of public schools; volunteer status.** Pursuant to chapter 90, the department of accounting and general services shall accept as volunteers qualified professional providers of construction or project-related professional services who are under contract with Helping Hands Hawaii in its Hawaii 3R's project. The department of accounting and general services shall maintain a list of volunteers so accepted, and shall provide the professional providers with appropriate guidance, supervision, and control to reasonably protect members of the public from injury or damage. Once accepted as a volunteer by the department of accounting and general services, the professional provider shall be entitled to protection from liability for volunteers under chapter 90, unless the injury or damage is caused by or is the result of the professional provider's wilful and wanton act or omission."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved June 28, 2002.)



A Bill for an Act Relating to the Hawaii Long-Term Care Financing Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Congressional Budget Office expects the national expenditures for long-term care services for people age sixty-five years and older to grow through the year 2040 ("Projections of Expenditures for Long-Term Care Services for the Elderly," March 1999, Congressional Budget Office). The main reason for the growth is that the U.S. population is aging, and elderly people receive the most long-term care services because they are more likely than younger people to have some kind of functional limitation. Many "baby boomers" will begin to reach the age of sixty-five years in 2011. In addition, more elderly people will reach advanced ages of eighty-five years and older than in the past because of declining mortality rates. These trends will cause the proportion of the population that is elderly, which was just under thirteen per cent in 1995, to rise to twenty per cent in 2040. More importantly, the population over age eighty-five, the segment most likely to require long-term care, will grow over three times its current size by 2040.

In Hawaii, according to a report by the Hawaii Health Information Corporation and the HMSA Foundation ("Health Trends in Hawaii," Fifth Ed., 2001, hereinafter referred to as the "HMSA report"), the State's population growth was greatest among the elderly between 1990 and 1999. The number of residents aged sixty-five to seventy-four years increased thirteen per cent compared to the national average of one per cent. The number of those aged seventy-five years and older increased by sixty-two per cent compared to the national average of twenty-four per cent. On a county level, all counties experienced significant growth in their elderly populations, with Honolulu experiencing the greatest increase from five per cent in 1970 to fourteen per cent in 1999. Since statehood, the overall proportion of elderly to total population has increased from roughly five per cent in 1960 to fourteen per cent in 1999.

As the "baby boomer" generation ages, these figures are projected to increase and cause a host of social and economic demands. Aging brings increasing risks of concomitant chronic health diseases such as cancer, cardiovascular disease, and stroke, all of which necessitate intense daily care in the later years of life.

The legislature finds that people in Hawaii are living longer, due in large measure to the State's excellent health care. However, it would be ironic if the State could not care for the elderly who have benefited from the enhanced health care received in their younger years. According to the HMSA report, "[t]he increasing proportion of elderly in Hawaii's population signals the need to monitor the ability of health care resources to meet the elderly's greater need for services, including the distribution of those services to the Neighbor Islands." Furthermore, according to the HMSA report, "[t]he proportion of the population deemed 'work age' (19-65) is decreasing relative to the elderly, raising questions about the social burdens this decreasing cohort must bear." These factors pose important questions for health care and public policy.

The legislature further finds that the dynamics of extended families in Hawaii will change radically, placing impossible financial and social hardships on Hawaii families. As people age or become disabled, they need services to help them with activities of daily living. Although the problem is one of economics, the approach to helping Hawaii's elderly and disabled should be prompted by compassion and caring.

The legislature further finds that because increasing numbers of Hawaii's residents will need long-term care services, there is a compelling need to create an

affordable method of financing those services. What Hawaii needs is a method of financing that is affordable and suitable for the majority of residents. Current methods of financing long-term care in Hawaii involve medicaid, private insurance, and personal assets. Medicaid eligibility is qualified by income limits. Private long-term care insurance is not widespread, and most people do not have sufficient personal assets to pay for long-term care services. Contrary to popular belief, medicare pays for only the initial hospitalization stay (acute care) of a patient for a limited number of days.

This Act is a product of the joint special committee of the legislature, formed pursuant to Senate Concurrent Resolution No. 23, C.D. 1, 2001, to develop and implement a plan for a dedicated source of revenue to support the long-term care needs of all citizens in the State regardless of income.

The purpose of this Act is to enact the Hawaii long-term care financing program to provide a universal and affordable system of providing for long-term care. It is the intent of this Act to provide an equitable and affordable system of long-term care for the people of Hawaii. Benefits for program participants are intended to be primary over long-term care benefits from private insurance companies and medicaid.

Furthermore, it is intended that this program promote individual choice and discretion in selecting and paying for long-term care services. It is not the intent of this Act to duplicate benefits for individuals already covered by long-term care insurance policies.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER HAWAII LONG-TERM CARE FINANCING PROGRAM**

**§ -1 Definitions.** As used in this chapter:

“Activities of daily living” means at least bathing, continence, dressing, eating, toileting, and transferring.

“Board of trustees” means the board of trustees charged with the general administration of this program under section -3.

“Long-term care services” means a broad range of supportive services needed by individuals with physical or mental impairments and have lost or never acquired the ability to function independently.

“Program” means the Hawaii long-term care financing program set forth in this chapter.

**§ -2 Hawaii long-term care financing program; establishment.** There is established the Hawaii long-term care financing program, which shall be placed with the department of budget and finance for administrative purposes. The purpose of this program shall be to provide a universal and affordable system of providing for long-term care. The program shall be administered by a board of trustees.

**§ -3 Composition of the board.** (a) The board of trustees of the Hawaii long-term care financing program shall consist of five regular members and one ex-officio non-voting member to be appointed by the governor as provided in section 26-34; provided that:

- (1) The terms of members shall be six years; and
- (2) The initial appointments may be staggered in accordance with section 26-34(a).

(c) The members of the board of trustees shall have experience in accounting, business, finance, law, or other similar fields, and experience equivalent to five years as an officer or manager of a viable business, community, or organization involved with insurance management, portfolio management, health care management, or similar field. The composition of the board of trustees shall represent a diversity of relevant experience.

(d) The board of trustees shall elect a chairperson from among themselves. The trustees shall serve without compensation.

**§ -4 Fiduciary and other obligations of the board of trustees.** (a) The board of trustees shall:

- (1) Have and maintain a fiduciary obligation for the program;
- (2) Discharge their duties solely in the best interest of the program;
- (3) Not knowingly participate in or undertake to conceal an act or omission of a trustee, when the act or omission is known to be a breach of fiduciary responsibility; or fail to discharge specific fiduciary responsibilities in a manner that enables another trustee to commit a breach; or having knowledge of a breach, fail to take whatever action that is reasonable and appropriate under the circumstances to remedy the breach;
- (4) Act with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent trustee, acting in a like capacity and familiar with similar matters would use in conducting an enterprise of similar character and purpose; and
- (5) Maintain proper books of accounts and records of the administration of the program.

(b) The board of trustees may contract with a qualified entity to administer the program or to process claims for benefit payments, or both; provided that the entity shall be appropriately licensed under chapter 431. Selection of the entity shall be subject to chapter 103D; provided that the insurance commissioner shall advise the board of trustees in selection of the entity.

(c) In lieu of subsection (b), the board of trustees may contract with a qualified entity to assume the risk of underwriting loss under the program at a capitated rate of payment to the entity. The entity shall be appropriately licensed under chapter 431 and adequately capitalized. Selection of the entity shall be subject to chapter 103D; provided that the state insurance commissioner shall advise the board of trustees in the selection of the entity. An entity selected under this subsection shall perform the functions under subsection (b), in addition to assuming the risk.

**§ -5 Hawaii long-term care benefits fund.** (a) There is established in the state treasury the Hawaii long-term care benefits fund, into which shall be deposited moneys collected as long-term care taxes. The department of budget and finance shall deposit the moneys in federally insured financial institutions in Hawaii to preserve the balance and ensure a reasonable return under prevailing interest rates. Investments of the moneys may be made subject to the requirements of this chapter.

(b) Expenditures from the fund shall be made solely for the purpose of making benefit payments and the cost of administration.

(c) Notwithstanding any law to the contrary, moneys in the fund shall not be transferred to another fund at any time nor for any purpose.

(d) Costs for the administration of the program shall be paid from moneys in the Hawaii long-term care benefits fund as follows:

- (1) Up to four per cent of the total monthly deposit into the fund to cover general administrative expenses; and

- (2) Up to four per cent of the total monthly amount of claims paid out from the fund may be used to pay for administrative expenses related to claims processing.

§ **-6 Investments.** (a) With the advice of the director of finance to ensure investment soundness, the board of trustees shall invest moneys in the Hawaii long-term care benefits fund solely in:

- (1) Obligations of any of the following classes:
  - (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that the principal of and interest on such obligations are payable in currency of the United States, or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;
  - (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and
  - (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;
- (2) Obligations eligible by law for purchase in the open market by federal reserve banks;
- (3) Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs; and
- (4) Any other investments deemed secure on the advice of the state director of finance.

(b) The board of trustees shall submit to the legislature no later than January 1 of every year, an annual report for the preceding fiscal year. The annual report shall include information concerning:

- (1) Investments, including the types and amounts;
- (2) Current balance in the fund;
- (3) Projected liabilities for the upcoming year;
- (4) Current reserve requirements to meet the projected liabilities for the upcoming year;
- (5) Amount of claims paid and taxes received in the year immediately preceding the issuance of the report; and
- (6) Any other useful information to determine the fiscal soundness of the fund.

§ **-7 Annual audits of the Hawaii long-term care benefits fund.** The auditor shall conduct an audit of the Hawaii long-term care benefits fund annually

for the first three years from the date the fund first receives deposits, and every three years thereafter; provided that the auditor may modify the time periods after the first three years as appropriate to the circumstances. The auditor shall publish a report of the results of every audit, including any recommendations.

**§ -8 Qualified long-term care services.** (a) To be eligible for benefit payments for long-term care services under the program, a qualifying individual shall:

- (1) Need assistance with two or more activities of daily living; or
- (2) Be afflicted with Alzheimer's disease or dementia.

(b) An individual qualifying for long-term care services under the program shall have written certification from a physician licensed under chapter 453 or 460, or an advanced practice registered nurse recognized under section 457-8.5, assigned by the board of trustees certifying that the individual requires one or more long-term care services for the period of time during which the individual receives the benefits under the program. The written certification shall specify that the individual:

- (1) Is unable to perform, without substantial assistance from another individual, at least two of six activities of daily living for a period of at least ninety days due to a loss of functional capacity; or
- (2) Requires substantial supervision to protect the individual from threats to health and safety to self or others due to severe cognitive impairment.

(c) The written certification required by subsection (b) shall be subject to approval by the board of trustees."

**SECTION 3.** (a) The governor shall appoint a temporary board of trustees, pursuant to section 26-41, Hawaii Revised Statutes, which shall be placed within the department of health, executive office on aging, for administrative purposes to serve beginning July 1, 2002, until June 30, 2003, to design the Hawaii long-term care financing program, based upon consideration of the actuarial report submitted to the legislature by the executive office on aging in 2002, and the report of the joint legislative committee on long term care financing of 2001, as stipulated by Senate Concurrent Resolution No. 23, C.D. 1, regular session of 2001, including:

- (1) Determining the amount of and means of collection of a tax or fee;
- (2) Determining the nature of and amount of benefits; and
- (3) Recommending a third-party administrator.

(b) The members of the temporary board of trustees shall have experience in accounting, business, finance, law, or other similar fields, and experience equivalent to five years as an officer or manager of a viable business, community, or organization involved with insurance management, portfolio management, health care management, or similar field. The composition of the board of trustees shall represent a diversity of relevant experience.

(c) The members of the temporary board of trustees shall elect a chairperson from among themselves. The trustees shall serve without compensation.

**SECTION 4.** The temporary board of trustees shall report its findings and recommendations, including proposed legislation to effectuate the Hawaii long-term care financing program established by this Act, to the legislature no later than twenty days prior to the convening of the regular session of 2003.

**SECTION 5.** (a) The temporary board of trustees shall cause to be prepared an actuarial report and actuarial opinion, as defined by the Actuarial Standards Board of the American Academy of Actuaries. The report and opinion shall be prepared by a member of the American Academy of Actuaries who is a fellow of the

Society of Actuaries, certifying that the program is in actuarial balance. Costs of the actuarial report shall be deemed an administrative expense under section 235-3(b)(1), Hawaii Revised Statutes.

(b) The actuarial report shall contain a statement by the actuary certifying that the techniques and methods used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. The report shall include:

- (1) An estimate of the expected future income to and disbursements to be made from the Hawaii long-term care benefits fund during each of the next ensuing ten fiscal years;
- (2) A projection of the tax rates necessary to keep the Hawaii long-term care benefits fund actuarially sound over the short-range and long-range future periods;
- (3) A statement of actuarial assumptions and methods used to determine costs and a detailed explanation of any change in actuarial assumptions or methods;
- (4) The current and projected number of participants and beneficiaries and the current and projected paid in taxes, benefit payments, current and permanent benefit credits earned, and the like, aggregated by current and past Hawaii taxpayer status and age;
- (5) The current value of accumulated assets of the Hawaii long-term care financing program and the value of assets used by the actuary in any computation of the amount of required taxes; and
- (6) The results of short-range and long-range actuarial sensitivity analyses.

(c) All work products, papers, documents, and data used or prepared by the actuary in preparing the actuarial report shall be public documents within the meaning of chapter 92F, Hawaii Revised Statutes.

(d) The actuarial report shall be completed in a timely fashion to enable the temporary board of trustees to submit its report to the legislature before the convening of the regular session of 2003.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2002-2003 to design the Hawaii long-term care financing program.

The sum appropriated shall be expended by the department of health, executive office on aging for the purposes of this Act.

SECTION 7. If any provision of this Act is in conflict with federal law, this Act shall be interpreted to be congruent with the federal law.

SECTION 8. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2003, and section 6 take effect on July 1, 2002.

(Approved July 1, 2002.)

## ACT 246

H.B. NO. 2741

A Bill for an Act Relating to the Cigarette and Tobacco Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that smoking-related diseases claim an estimated four hundred thirty thousand seven hundred American lives each year,

including those affected indirectly, such as babies born prematurely due to prenatal maternal smoking and victims of "secondhand" exposure to tobacco's carcinogens. Smoking costs the United States approximately \$97,200,000,000 each year in health care costs and lost productivity. It is directly responsible for eighty-seven per cent of lung cancer cases and causes most cases of emphysema and chronic bronchitis.

Smoking is also a major factor in coronary heart disease and stroke. It may be causally related to malignancies in other parts of the body and has been linked to a variety of other conditions and disorders, including slowed healing of wounds, infertility, and peptic ulcer disease.

Smoking during pregnancy accounts for an estimated twenty to thirty per cent of low-birth weight babies, up to fourteen per cent of pre-term deliveries, and some ten per cent of all infant deaths. Even apparently healthy, full-term babies of smokers have been found to be born with narrowed airways and curtailed lung function. In 1999, 12.9 per cent of women who gave birth smoked during pregnancy.

Smoking by parents is also associated with a wide range of adverse effects on their children, including exacerbation of asthma, increased frequency of colds and ear infections, and sudden infant death syndrome. An estimated one hundred fifty thousand to three hundred thousand cases of lower respiratory tract infections in children less than eighteen months of age, resulting in seven thousand five hundred to fifteen thousand annual hospitalizations, are caused by secondhand smoke. Secondhand smoke involuntarily inhaled by nonsmokers from other people's cigarettes is classified by the United States Environmental Protection Agency as a known human (Group A) carcinogen, responsible for approximately three thousand lung cancer deaths annually in American nonsmokers.

Approximately twenty two million three hundred thousand American women are smokers. Current female smokers aged thirty-five years or older are twelve times more likely to die prematurely from lung cancer than nonsmoking females. More American women die annually from lung cancer than any other type of cancer. For example, lung cancer has caused an estimated sixty-seven thousand six hundred female deaths in 2000, compared with forty thousand eight hundred estimated female deaths caused by breast cancer.

The purpose of this Act is to discourage smoking and the use of tobacco products by changing the excise tax on cigarettes.

SECTION 2. Section 245-3, Hawaii Revised Statutes, is amended to read as follows:

**"§245-3 Taxes.** (a) Every wholesaler or dealer, in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the State:

- (1) An excise tax equal to 5.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 1998, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; ~~and~~
- (2) An excise tax equal to 6.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after September 30, 2002, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (3) An excise tax equal to 6.50 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2003, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (4) An excise tax equal to 7.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2004, whether or not

sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; and

- [(2)] (5) An excise tax equal to forty per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Where the tax imposed has been paid on cigarettes or tobacco products ~~[which]~~ that thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. The tax shall be applied to cigarettes through the use of stamps.

(b) The taxes, however, are subject to the following limitations:

- (1) The measure of the taxes shall not include any cigarettes or tobacco products exempted, and so long as the same are exempted, from the imposition of taxes by the Constitution or laws of the United States;
- (2) The measure of taxes shall exempt and exclude all sales of cigarettes and tobacco products to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under this chapter), sold by any person licensed under this chapter; and
- (3) The taxes shall be paid only once ~~[in respect of]~~ with respect to the same cigarettes or tobacco product. This limitation shall not prohibit the imposition of the excise tax on receipts from sales of tobacco products under subsection (a)(2); provided that the amount subject to the tax on each sale shall not include amounts previously taxed under this chapter.”

SECTION 3. Act 249, Session Laws of Hawaii 2000, is amended by amending section 20 to read as follows:

“SECTION 20. This Act shall take effect upon its approval; provided that:

- (1) Sections 15 and 16 shall take effect on July 1, 2000; and
- (2) On June 30, 2006, this Act, except for section 4, shall be repealed and sections 245-1, ~~[245-3,]~~ 245-5, 245-6, 245-7(b)[~~;~~]<sup>1</sup> and (c), 245-8(a), 245-9, 245-15, 712A-5(1), and 712A-16(1), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2002.

(Approved July 1, 2002.)

**Note**

1. So in original.

**ACT 247**

H.B. NO. 2840

A Bill for an Act Relating to State Government.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to ensure that scarce state resources are devoted to core government functions as specified in the Hawaii state plan and



functional plans and to provide a mechanism by which all state government programs may be classified according to whether they implement core government functions.

SECTION 2. (a) There is established within the legislature, for administrative purposes, the core government functions advisory commission. The commission is deemed to be temporary and for a special purpose in order to satisfy the requirements of article V, section 6, of the State Constitution.

(b) The purposes of the advisory commission shall be to:

- (1) Determine whether and to what extent state programs implement core government functions as specified in the Hawaii state plan and functional plans; and
- (2) Recommend how core government functions can be improved through the elimination, reorganization, or improvement of programs deemed non-core programs or the redistribution of their resources, or both.

(c) The advisory commission shall be composed of fifteen members to be appointed as follows:

- (1) Two by the speaker of the house of representatives;
- (2) One by the minority leader of the house of representatives;
- (3) Two by the president of the senate;
- (4) One by the minority leader of the senate;
- (5) One by the chief justice;
- (6) One by each of the mayors of the respective counties; and
- (7) Four by the governor.

The appointors of advisory commission members shall strive to the extent possible to appoint a commission representative of the community, including business, public and private sector labor organizations, and state and county government.

The advisory commission shall appoint a chairperson from among its own members.

(d) The advisory commission shall have the following duties:

- (1) Determine, using whatever information and expertise is available to it, standards and criteria for the identification of core government functions by reference to the goals, objectives, policies, and priorities specified in the Hawaii state plan and functional plans;
- (2) Complete a fair and credible review of each state program to determine whether, as operated or as modified, it implements a core government function; and
- (3) Determine, by reference to the core government functions standards and criteria identified under subsection (1) and the determination under subsection (2), what non-core programs may be eliminated or modified to realize appropriate savings in the state operating budget.

(e) The advisory commission's work shall be divided into two phases.

Phase I shall consist of a basic review of each state program in accordance with subsection (d). A basic program review shall result in each state program being designated as "core" or "non-core" in terms of whether it does or does not implement a core government function as identified by the commission.

Phase II shall consist of a ranking of non-core programs with the goal of providing criteria for implementing any necessary reductions in the state operating budget.

(f) The advisory commission shall collect and analyze the following information in relation to each program:

- (1) The legal authority for the program;

- (2) The needs addressed by the program, including the consequences that would occur if it did not exist;
- (3) The goals and objectives of the program;
- (4) The major activities of the program;
- (5) Direct services to individuals and communities provided by the program;
- (6) The target groups served by the program;
- (7) The budget for the program in terms of dollars and full-time equivalent personnel;
- (8) Evidence of the program's effectiveness;
- (9) Client satisfaction and perceptions of program value, if available; and
- (10) The specific elements of core government functions that are addressed by the program.

(g) The advisory commission shall use the following criteria to determine core government functions standards and criteria:

- (1) The importance or centrality of the program to the Hawaii state plan and functional plans;
- (2) The extent to which the program provides direct services to individuals or communities, or both;
- (3) The extent to which the program is needed to ensure individuals' health, safety, and civil rights; and
- (4) The extent to which the program is needed to comply with legal mandates.

SECTION 3. (a) The core government functions advisory commission shall submit its findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 2003.

(b) As part of its findings and recommendations, the advisory commission shall propose legislation to eliminate, reorganize, or improve designated programs or redistribute their resources, or both, to reduce the state operating budget for fiscal biennium 2003-2005.

SECTION 4. The core government functions advisory commission shall cease to exist after June 30, 2003.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 1, 2002.)

## ACT 248

S.B. NO. 733

A Bill for an Act Relating to Employment Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 383-128, Hawaii Revised Statutes, is amended to read as follows:

**“§383-128 Employment and training fund established.** (a) Effective January 1, 1992, there is established in the state treasury, apart from all other funds in this State, a special fund to be known as the employment and training fund. All assessments collected pursuant to section 383-129 and all other moneys received by

the fund from any other source shall be deposited into the employment and training fund.

(b) The moneys in the employment and training fund may be used for funding:

- (1) The operation of the state employment service for which no federal funds have been allocated;
- (2) Business-specific training programs to create a more diversified job base and to carry out the purposes of the new industry training program pursuant to section 394-8;
- (3) Industry or employer-specific training programs where there are critical skill shortages in high growth occupational or industry areas;
- (4) Training and retraining programs to assist workers who have become recently unemployed or likely to be unemployed;
- (5) Programs to assist residents who do not otherwise qualify for federal or state job training programs to overcome employment barriers; and
- (6) Training programs to provide job-specific skills for individuals in need of assistance to improve career employment prospects.

(c) The director ~~[may]~~ shall require employers who use or who are assisted by any of these programs to contribute ~~[up to]~~ fifty per cent of the cost of ~~[such]~~ the assistance in cash or in-kind contributions.

(d) The department may contract for employment, education, and training services from public and private agencies and nonprofit corporations. Contracts, pursuant to subsection (b), shall be exempt from chapters 103D and 103F so funds for these services may be expended in a timely manner to effectuate the purposes of this section. All other disbursements shall be in accordance with chapters 103D and 103F.

(e) The department shall ensure the proper administration of the employment and training fund program by:

- (1) Standardizing contractual language and requirements for all grantees and vendors;
- (2) Expediting the program's macro grant application process by either eliminating the county advisory committees' review or by formalizing, defining, and including specific timeframes related to these committees;
- (3) Providing evidence that grant applications are treated in accordance with fund policies by documenting the reasons for acceptance and denial of each proposed grant;
- (4) Improving the program's monitoring of funds disbursed by, at a minimum:
  - (A) Establishing and implementing an organized filing system;
  - (B) Requiring documentation of all contact made with grant applicants and recipients; and
  - (C) Ensuring that staff in all branch offices are familiar with the various reports and submittals required of the different fund recipients;
- (5) Developing and disseminating the state participant evaluation form to the program's vendors;
- (6) Developing and implementing strategies for evaluating the program's overall success that include but are limited to:
  - (A) Assessing whether the program is improving the long-term employability of Hawaii's people;
  - (B) Measuring program outcomes related to work unit and company performance; and

- (C) Collecting and comparing wage data from workers who have utilized the fund versus those who have not;
- (7) Increasing awareness of the fund and its programs by strengthening publicity;
- (8) Establishing consistent attendance-reporting requirements for both macro grant projects and micro vendors and comparing attendance rates for projects and vendors who charge additional fees to participants versus those who do not; and
- (9) Reporting as encumbrances only those obligations for which the fund has entered into bona fide contracts.
- ~~[(e)]~~ (f) For purposes of grants and subsidies awarded under subsection (d), any organization requesting a grant or subsidy shall:
- (1) Be licensed and accredited, as applicable, under the laws of the State;
  - (2) Have at least one year's experience with the project or in the program area for which the request or proposal is being made; except that the director may grant an exception where the project or program area deals with new industry training; and
  - (3) Be, employ, or have under contract persons who are qualified to engage in the program or activity to be funded by the State.
- ~~[(f)]~~ (g) Recipients of grants or subsidies shall be subject to the following conditions:
- (1) Any organization requesting a grant or subsidy shall submit its request together with all the information required by the director on an application form provided by the department;
  - (2) The recipient of a grant or subsidy shall not use public funds for purposes of entertainment or perquisites;
  - (3) The recipient of a grant or subsidy shall comply with applicable federal, state, and county laws;
  - (4) The recipient of a grant or subsidy shall comply with any other requirements the director may prescribe;
  - (5) The recipient of a grant or subsidy shall allow the director, the legislative bodies, and the legislative auditor full access to records, reports, files, and other related documents so that the program, management, and fiscal practices of the grant recipient may be monitored and evaluated to assure the proper and effective expenditure of public funds;
  - (6) Every grant or subsidy shall be monitored according to rules established by the director to ensure compliance with this section; and
  - (7) Any recipient of a grant or subsidy under this section who withholds or omits any material fact or deliberately misrepresents facts to the director or who violates the terms of the recipient's contract shall be in violation of this section and, in addition to any other penalties provided by law, shall be prohibited from applying for a grant or subsidy under this section for a period of five years from the date of termination.
- ~~[(g)]~~ (h) The director shall submit a report to the legislature on the status of the employment and training fund, including expenditures and program results, at least twenty days prior to the convening of each regular legislative session.
- ~~[(h)]~~ (i) The director of finance shall act as the treasurer and custodian of the employment and training fund, invest those moneys in accordance with applicable laws and rules, and disburse the moneys in the employment and training fund in accordance with directions by the director of labor and industrial relations[-]; provided that if administrative encumbrances are executed, then any portions thereof that are unexpended at the close of each fiscal year shall be lapsed into the employment and training fund. All interest earned from investment of moneys in the

employment and training fund shall be deposited in the fund. The director of finance shall be liable on the director's official bond for the faithful performance of all duties in connection with the employment and training fund. All sums recovered on the surety bond for losses sustained by the employment and training fund shall be deposited in the fund.

~~[(h)]~~ (j) Administrative costs for the collection of employment and training fund contributions and for costs related to the establishment and maintenance of the employment and training fund shall be borne by the fund beginning with fiscal year 1992-1993 and thereafter.

~~[(j)]~~ (k) The director may establish positions and hire necessary personnel to establish and administer the employment and training fund without regard to ~~[chapters]~~ chapter 76 ~~[and 77]~~.

SECTION 2. Section 383-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) [Effective January 1, 1992, through June 30, 1997, and from January 1, 1999, through December 31, 2003, in]~~ In addition to contributions determined by section 383-68, every employer, except an employer who has selected an alternative method of financing liability for unemployment compensation benefits pursuant to section 383-62, or an employer who has been assigned a minimum rate of zero per cent or the maximum rate of five and four-tenths per cent in accordance with section 383-68, shall be subject to an employment and training fund assessment at a rate of[:

~~(1) .05] .01 per cent of taxable wages [for 2000;~~

~~(2) .03 per cent of taxable wages for 2001; and~~

~~(3) .01 per cent of taxable wages for 2002;]~~

as specified in section 383-61.

~~[For 2003 and all subsequent years, there shall be no employment and training fund assessments.]”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved July 1, 2002.)

## ACT 249

S.B. NO. 2270

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that as the education reform movement has gained momentum nationwide and in Hawaii over the past two decades, setting standards for all those involved in education and holding them accountable is necessary to strengthen the public school system. The discussion about educational accountability at the school level often begins with leadership. Many studies show that a crucial factor in determining whether schools and districts succeed or fail is the quality and stability of their leadership. “Behind every great school is a great principal,” is a notion that permeates school districts nationwide and in Hawaii.

School administrators must be given the appropriate education, training, professional development, and support they need to be qualified leaders and create a school environment that is conducive to student success. The legislature concludes that to strengthen the school administrator profession, standards of practice for

public school administrators must be set forth to ensure that Hawaii's public schools are administered by properly trained and qualified leaders.

The purpose of this Act is to take the foundational steps towards establishing an independent body to set and monitor standards for school administrators.

SECTION 2. (a) The department of education, in collaboration with the Hawaii teacher standards board, shall convene a working group composed of representatives of collective bargaining unit (6) and current or prospective school administrator training programs including programs at the University of Hawaii at Manoa, Brigham Young University-Hawaii Campus, Chaminade University, or other prospective administrator training programs. Members of bargaining unit (6) shall be allowed to nominate their representatives to the working group.

(b) The working group shall consider the findings of the department of education pursuant to Act 188, Session Laws of Hawaii 2001, and any subsequent studies pertaining to school administrator or educational officer job duties, responsibilities, or competencies before submitting final recommendations to the Legislature for addressing school administrator quality. The working group shall also address the following in its recommendations:

- (1) The composition, duties, and powers of a proposed independent body to license or certify, and establish standards for, school administrators;
- (2) The participation and representation of school administrators in the establishment and implementation of standards of practice and the means by which the standards will be monitored and maintained;
- (3) The participation of school administrators in the establishment and implementation of program standards for school administrator preparation programs;
- (4) The powers and duties of the school administrator profession, the department of education, and the Hawaii teacher standards board as they pertain to the working group's recommendations;
- (5) The resources needed to implement the working group's recommendations;
- (6) The proposed funding mechanism for implementing the working group's recommendations;
- (7) Statutory changes needed to implement the working group's recommendations; and
- (8) Any other related topics identified by the working group.

The working group shall use July 1, 2005 as its target date for the implementation of its recommendations to the legislature.

(c) The Hawaii Educational Policy Center shall provide research and technical assistance as requested by the working group.

(d) The working group shall submit a report to the legislature no later than twenty days prior to the convening of the 2003 regular session.

SECTION 3. This Act shall take effect on July 1, 2002.

(Approved July 1, 2002.)

A Bill for an Act Relating to Transient Accommodations Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§237D- Transient accommodations tax trust fund.** (a) There is established in the state treasury the transient accommodations tax trust fund to be administered by the director of finance, into which shall be deposited the revenues prescribed by section 237D-6.5(b).

(b) All investment earnings from moneys in the trust fund shall be credited to the general fund.

(c) The purpose of the trust fund is to serve as a holding account for transient accommodations tax revenues to supplement shortfalls in the tourism special fund, if the tourism special fund does not receive \$63,292,000 in transient accommodation tax revenues as provided in this section.

(d) If the amount of transient accommodations tax revenues distributed to the tourism special fund pursuant to section 237D-6.5(b)(2) is projected by the director of finance to be less than \$63,292,000 in the aggregate in a fiscal year, the director of finance, at such times and in such amounts that the director shall reasonably determine, shall deposit moneys from the trust fund to the tourism special fund to provide the tourism special fund with a minimum of \$63,292,000 in transient accommodations tax revenues in the aggregate for a fiscal year; provided that any deposit from the trust fund to the tourism special fund shall be limited to the moneys available in the trust fund.

(e) If the tourism special fund receives less than \$63,292,000 in transient accommodations tax revenues in the aggregate for a fiscal year, even after receiving moneys from the trust fund, the shortfall shall be non-cumulative and shall not represent a claim against future distributions from the trust fund.

(f) No deposit from the trust fund to the tourism special fund shall be made that would cause the tourism special fund to receive more than \$63,292,000 in transient accommodations tax revenues in the aggregate for a fiscal year.

(g) Any moneys remaining in the trust fund at the end of each fiscal year shall be credited to the general fund; provided that, upon receipt by the tourism special fund of at least \$63,292,000 in transient accommodations tax revenues in the aggregate during the course of a fiscal year, the moneys in the trust fund shall thereafter be credited to the general fund.”

SECTION 2. Section 184-3.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the state treasury a fund to be known as the state parks special fund~~[-AH]~~, into which shall be deposited:

- (1) All proceeds collected by the state parks programs involving park user fees, any leases or concession agreements, the sale of any article purchased from the department to benefit the state parks programs, or any gifts or contributions~~[-, shall be deposited into this fund]~~; provided that proceeds derived from the operation of Iolani Palace shall be used to supplement its educational and interpretive programs~~[-]~~; and
- (2) Transient accommodations tax revenues pursuant to section 237D-6.5(b)(2); provided that these moneys shall be expended in response to

a master plan developed in coordination with the Hawaii tourism authority.”

SECTION 3. Section 198D-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) The trail and access program shall use funding for the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department from the following sources:

- (1) A portion of the highway fuel taxes collected under chapter 243;
- (2) Federal government grants;
- (3) Private contributions; ~~and~~
- (4) Fees, established pursuant to administrative rules and charged by the department for the commercial and other use of trails and trail accesses under the jurisdiction of the department~~[-]; and~~
- (5) Transient accommodations tax revenues pursuant to section 237D-6.5(b)(2).”

2. By amending subsection (d) to read:

“(d) The moneys specified in subsection (b)(1), (3), ~~and~~ (4), and (5) shall be deposited in the special land and development fund under section 171-19 for the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department~~[-]; provided that the moneys specified in subsection (b)(5) shall be expended for the management, maintenance, and development of trails and access areas frequented by visitors in response to a master plan developed in coordination with the Hawaii tourism authority.”~~

SECTION 4. Section 201B-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Moneys in the tourism special fund shall be used by the authority for the purposes of this chapter, provided that ~~not~~:

- (1) ~~Not more than three per cent of this amount shall be used for administrative expenses~~[-]; provided further that of this amount the sum of], including \$15,000 [shall be made available] for a protocol fund to be expended at the discretion of the executive director~~[-]; provided further that moneys in the tourism special fund shall be used~~, and~~ for the salaries and expenses of the office of tourism established in section 201-92~~[-]; and~~~~
- (2) At least \$1,000,000 shall be made available to support efforts to manage, improve, and protect Hawaii’s natural environment and areas frequented by visitors.”

SECTION 5. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[Beginning on January 1, 1999[-], revenues]~~ Revenues collected under this chapter shall be distributed as follows:

- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center capital and operations<sup>1</sup> fund established under section 206X-10.5;
- (2) ~~[37-9]~~ 32.6 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section 201B-11~~[-]; for tourism promotion and visitor industry research; provided that beginning on July 1, 2002:~~



- (A) If the amount of revenues deposited into the tourism special fund exceeds \$62,292,000 in any fiscal year, of the first \$1,000,000 in revenues deposited in excess of \$62,292,000:
- (i) Ninety per cent shall be deposited into the state parks special fund established in section 184-3.4; and
  - (ii) Ten per cent shall be transferred to the Hawaii statewide trail and access program pursuant to section 198D-2(b)(5); provided that the total amount deposited into the state parks special fund and to the Hawaii statewide trail and access program shall not exceed \$1,000,000 in any fiscal year;
- (3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent [-]; and
- (4) 5.3 per cent of the revenues collected under this chapter shall be deposited into the transient accommodations tax trust fund established under section 237D-\_\_\_\_\_.

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection, and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect on July 1, 2002.

(Approved July 1, 2002.)

#### Notes

- 1. Prior to amendment “special” appeared here.
- 2. Edited pursuant to HRS §23G-16.5.

## ACT 251

S.B. NO. 2416

A Bill for an Act Relating to the Hawaii Long-Term Care Financing Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that people in Hawaii are living longer, due in large measure to the State’s excellent health care. The legislature further finds that as they age, they incur concomitant chronic health diseases such as cancer, cardiovascular disease, and stroke, all of which necessitate intense daily care in the later years of life. As people age or become disabled, they need services to help them with activities of daily living. The approach to helping Hawaii’s elderly and disabled should be prompted by compassion and caring, although the problem is inextricably one of economics. Medicaid, Medicare, long-term care insurance, and personal assets are insufficient or inaccessible to most individuals.

The legislature is enacting, through H.B. No. 2638, H.D. 2, S.D. 1, C.D. 1,<sup>1</sup> of this 2002 regular session, the Long Term Care Financing Act. The Long Term Care Financing Act establishes the foundation for a universal and affordable system of providing long-term care, and a temporary board of trustees charged with the responsibility of designing a tax-based financing system. This Act is a companion measure, the purpose of which is to convene a summit to bring together private and

public organizations to identify the types and quality of services, service delivery system, and service delivery policies for the long-term care system established in H.B. No. 2638, H.D. 2, S.D. 1, C.D. 1.<sup>1</sup>

SECTION 2. The Executive Office on Aging shall convene a long-term care summit to bring together private and public organizations, including State, county, and community organizations, to collaborate to identify the types and quality of services, service delivery system, and service delivery policies to ensure the development of a comprehensive and affordable long-term care system for the State.

The Executive Office on Aging shall submit to the legislature a report of findings and recommendations no later than twenty days before the convening of the regular session of 2003.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$40,000, or so much thereof as may be necessary for fiscal year 2002-2003, for a long-term care summit to be contracted by the Executive Office on Aging with a non-governmental public policy organization. The summit shall bring together business, labor, government, including state and county agencies, and community organizations, to work together to identify the types and quality of services, service delivery system, and service delivery policies to implement a comprehensive and affordable long-term care system for Hawaii.

The sum appropriated shall be expended by the Executive Office on Aging.

SECTION 4. This Act shall take effect on July 1, 2002.

(Approved July 1, 2002.)

**Note**

1. Act 245.

**ACT 252**

S.B. NO. 2763

A Bill for an Act Relating to Birth Defects.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . HAWAII BIRTH DEFECTS PROGRAM**

**§321- Definitions.** As used in this part, unless the context requires otherwise:

“Adverse reproductive outcome” means a birth defect, stillbirth, infant death up to one year of age, or spontaneous or medical termination of pregnancy for a birth defect.

“Birth defect” means an abnormality of structure, function, or body metabolism present at birth that adversely affects a child’s health and development, results in a physical or mental disability, or is fatal.

“Institutional review board” means an institutional review board established in accordance with 7 Code of Federal Regulations 1c.107, 10 Code of Federal Regulations 745.107, 14 Code of Federal Regulations 1230.107, 15 Code of Federal Regulations 27.107, 16 Code of Federal Regulations 1028.107, 21 Code of Federal Regulations 56.107, 22 Code of Federal Regulations 225.107, 24 Code of Federal Regulations 60.107, 28 Code of Federal Regulations 46.107, 32 Code of Federal Regulations 219.107, 34 Code of Federal Regulations 97.107, 38 Code of Federal

Regulations 16.107, 40 Code of Federal Regulations 26.107, 45 Code of Federal Regulations 46.107, 45 Code of Federal Regulations 690.107, or 49 Code of Federal Regulations 11.107.

**§321- Birth defects program.** The department of health shall establish the statewide Hawaii birth defects program to:

- (1) Collect surveillance information on birth defects and other adverse reproductive outcomes;
- (2) Report the incidence, trends, and causes of birth defects and other adverse reproductive outcomes;
- (3) Report information for the development of prevention strategies to reduce the incidence of birth defects and other adverse reproductive outcomes; and
- (4) Develop strategies to improve the access of children with birth defects to health and early intervention services.

**§321- Confidentiality of data.** (a) The identity of, or any information which alone or in combination with other reasonably available information that may be used to identify, any person whose information is collected under this part shall be confidential.

(b) Statistical data and information that do not identify any person may be released.

**§321- Rules.** The department may adopt rules pursuant to chapter 91 as necessary for the Hawaii birth defects program.

**§321- Requests for information.** The department shall provide information about appropriate health and early intervention services to persons who request the information.

**§321- Hawaii birth defects special fund.** There is established within the state treasury the Hawaii birth defects special fund to be administered and expended by the department of health, into which shall be deposited fees remitted pursuant to section 572-5. Moneys in the special fund shall be used for the payment of the operating expenses of the Hawaii birth defects program.”

SECTION 2. Chapter 324, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

#### **“PART . BIRTH DEFECTS STUDIES**

**§324- Definitions.** As used in this part, unless the context requires otherwise:

“Adverse reproductive outcome” means a birth defect, stillbirth, infant death up to one year of age, or spontaneous or medical termination of pregnancy for a birth defect.

“Birth defect” means an abnormality of structure, function, or body metabolism present at birth that adversely affects a child’s health and development, results in a physical or mental disability, or is fatal.

“Institutional review board” means an institutional review board established in accordance with 7 Code of Federal Regulations 1c.107, 10 Code of Federal Regulations 745.107, 14 Code of Federal Regulations 1230.107, 15 Code of Federal Regulations 27.107, 16 Code of Federal Regulations 1028.107, 21 Code of Federal Regulations 56.107, 22 Code of Federal Regulations 225.107, 24 Code of Federal

Regulations 60.107, 28 Code of Federal Regulations 46.107, 32 Code of Federal Regulations 219.107, 34 Code of Federal Regulations 97.107, 38 Code of Federal Regulations 16.107, 40 Code of Federal Regulations 26.107, 45 Code of Federal Regulations 46.107, 45 Code of Federal Regulations 690.107, or 49 Code of Federal Regulations 11.107.

“Registry” means a collection of data organized so that the information can be processed and made available for research.

“Research” means a systematic investigation designed to develop or contribute to generalizable knowledge.

“Researcher” means a person who is conducting research which has been approved or declared exempt by an institutional review board.

**§324- Information collection.** (a) Health care facilities and health care providers shall make available to the Hawaii birth defects program information contained in health care records that pertain to birth defects or other adverse reproductive outcomes.

(b) Any person or public or private health care facility may provide information or other data or relevant material relating to individuals with birth defects or adverse reproductive outcomes to the Hawaii birth defects program for inclusion in the birth defects registry.

(c) This part shall not apply if the parent, guardian, or other person having custody or control of the child objects on the grounds that the collection of the information conflicts with their religious beliefs. The written objection shall be made a part of the child’s medical record.

(d) No liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided information or material to the Hawaii birth defects program.

**§324- Use of collected information.** (a) The information collected under this part shall be used by the department of health or researchers only for the purpose of advancing medical and public health research, medical education, or education of the public in the interest of reducing morbidity or mortality, and only as approved by an institutional review board.

(b) The identity of, or any information which alone or in combination with other reasonably available information that may be used to identify, any person whose condition or treatment has been studied under this part shall be confidential.

(c) If the Hawaii birth defects program or researchers intend to collect additional information directly from a patient or patient’s relative for research studies approved by an institutional review board, the researcher shall first obtain approval for the request from the patient’s attending physician. The use of the additional information obtained by researchers shall be governed by subsection (a).

**§324- Penalty.** Any person violating this part shall be guilty of a misdemeanor and fined not more than \$500.”

SECTION 3. Section 572-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The department of health shall appoint, and at its pleasure remove, one or more suitable persons as agents authorized to grant marriage licenses under this chapter in each judicial circuit. The agents may issue licenses from any state facility when deemed necessary by the director. Any agent appointed under this subsection and receiving an application for a marriage license shall collect from the applicant for the license [~~\$50,~~ \$60, of which the agent, except those provided for in subsection (b), shall retain \$9 for the agent’s benefit and compensation and shall

remit ~~[\$41]~~ \$51 to the director of health. Upon the receipt of remittances under this subsection, the director of health shall deposit:

- (1) \$32 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5; ~~[and]~~
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6[-]; and
- (4) \$10 for each license issued to the credit of the Hawaii birth defects special fund established under section 321-\_\_\_\_\_.

(b) The department may appoint, as regular employees under the civil service and classification laws, the number of suitable persons as agents authorized to grant marriage licenses for whom provision has been made in the general appropriation act. In the case of these agents, the full amount collected from applicants shall be remitted to the director of health. Upon the receipt of remittances under this subsection, the director of health shall deposit:

- (1) \$41 for each license issued to the credit of the general fund of the State~~[[;]]~~
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5~~[[;]]~~; ~~[and]]~~
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6[-]; and
- (4) \$10 for each license issued to the credit of the Hawaii birth defects special fund established under 321-\_\_\_\_\_."

SECTION 4. There is appropriated out of the Hawaii birth defects special fund the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2002-2003, to pay for the operating expenses of the Hawaii birth defects program established by this Act.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5.<sup>1</sup> This Act shall take effect on July 1, 2002.

(Approved July 1, 2002.)

**Note**

1. No ramseyer clause.

**ACT 253**

H.B. NO. 2451

A Bill for an Act Relating to the Convention Center.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. During the 1988 legislative session, Act 96 was enacted to create the convention center authority for the primary purpose of approving a convention center development plan and supervising the development by a developer of all development within the convention center district pursuant to the approved convention center development plan, including the development of a convention center facility. The convention center authority was also authorized to enter into contracts for the professional management, operation, and maintenance of the convention center facility. Construction of the convention center facility has been completed and a contract for its professional management, operation, and

maintenance has been executed by the State. The convention center authority law expired on June 30, 2000.

The legislature recognizes that the primary intent behind the development of the convention center was to bring new and additional outside money into the state economy. Since the development of the convention center facility was primarily financed by the sale of bonds that would be repaid by the transient accommodations tax, it is the State's policy to link the use of the convention center facility with hotel room bookings. Therefore, the legislature finds that it is appropriate for the State to give first priority to out-of-state bookings that would generate revenues for the State.

The legislature further finds that the State should give second priority booking at the convention center facility to corporate meetings, special events, trade shows, consumer shows, entertainment shows, social events, or events catering to the general community, if it does not interfere with any potential priority use.

Since the effectiveness of the convention center is to be primarily determined by its ability to generate tourism-related revenues for the State, it should be given the necessary tools to effectively compete against other convention and hotel destinations. The Hawaii convention center should be allowed to operate as a business enterprise, with adequate moneys for capital expenditures related to major repair, replacement, or construction of items at the convention center facility.

The purpose of this Act is to assign the responsibility to market, operate, manage, and maintain the Hawaii convention center facility to the Hawaii tourism authority and to establish a Hawaii convention center enterprise special fund.

SECTION 2. Chapter 201B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201B- Convention center enterprise special fund.** (a) There is established in the state treasury the convention center enterprise special fund, into which shall be deposited:

- (1) A portion of the revenues from the transient accommodations tax, as provided by section 237D-6.5;
- (2) All revenues or moneys derived from the operations of the convention center to include all revenues from the food and beverage service, all revenues from the parking facilities or from any concession, and all revenues from the sale of souvenirs, logo items, or any other items offered for purchase at the convention center;
- (3) Private contributions, interest, compensation, gross or net revenues, proceeds, or other moneys derived from any source or for any purpose arising from the use of the convention center facility; and
- (4) Appropriations by the legislature, including any transfers from the tourism special fund established under section 201B-11 for marketing the facility pursuant to section 201B-7(a)(9).

(b) Moneys in the convention center enterprise special fund shall be used by the authority for the payment of any and all debt service relating to the convention center, any expense arising from any and all use, operation, maintenance, alteration, improvement, or any unforeseen or unplanned repairs of the convention center, including without limitation the food and beverage service and parking service provided at the convention center facility, the sale of souvenirs, logo items, or other items, for any future major repair, maintenance, and improvement of the convention center facility as a commercial enterprise or as a world class facility for conventions, entertainment, or public events, and for marketing the facility pursuant to section 201B-7(a)(9).”

SECTION 3. Section 201B-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Convention center facility” or “convention center” means any combination of land, buildings, and improvements thereon, acquired or developed by the State, and includes exhibition halls, meeting rooms, a plenary session hall, and support space that reflect a Hawaiian sense of place; any other structure or facility required or useful for the operation of a convention center, including commercial, office, community service, parking, garage, and other supporting service structures; and, all necessary, useful, and related equipment, furnishings, and appurtenances.”

SECTION 4. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center [~~capital and operations~~] enterprise special fund under section [~~206X-10.5;~~] 201B-;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees' retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 210B-11<sup>1</sup>;
- (19) Department of commerce and consumer affairs' special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency and budget<sup>2</sup> reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649;
- (27) High technology special fund under section 206M-15.5;
- (28) Public schools special fees and charges fund under section 302A-1130(f);
- (29) Cigarette tax stamp enforcement special fund established by section 28-14;

- (30) Cigarette tax stamp administrative special fund established by section 245-41.5; and
  - (31) Tobacco enforcement special fund established by section 28-15;
- shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 5. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
  - (2) Special out-of-school time instructional program fund under section 302A-1310;
  - (3) School cafeteria special funds of the department of education;
  - (4) Special funds of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Domestic violence prevention special fund under section 321-1.3;
  - (9) Spouse and child abuse special account under section 346-7.5;
  - (10) Spouse and child abuse special account under section 601-3.6;
  - (11) Funds of the employees' retirement system created by section 88-109;
  - (12) Unemployment compensation fund established under section 383-121;
  - (13) Hawaii hurricane relief fund established under chapter 431P;
  - (14) Convention center [~~capital and operations~~] enterprise special fund established under section [~~206X-10.5;~~] 201B-\_\_\_;
  - (15) Hawaii health systems corporation special funds;
  - (16) Tourism special fund established under section 201B-11;
  - (17) Compliance resolution fund established under section 26-9;
  - (18) Universal service fund established under chapter 269;
  - (19) Integrated tax information management systems special fund under section 231-3.2;
  - (20) Insurance regulation fund under section 431:2-215;
  - (21) Hawaii tobacco settlement special fund under section 328L-2;
  - (22) Emergency and budget reserve fund under section 328L-3;
  - (23) Probation services special fund under section 706-649;
  - (24) High technology special fund under section 206M-15.5;
  - (25) Public schools special fees and charges fund under section 302A-1130(f);
  - (26) Cigarette tax stamp enforcement special fund established by section 28-14;
  - (27) Cigarette tax stamp administrative special fund established by section 245-41.5; and
  - (28) Tobacco enforcement special fund established by section 28-15;
- shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."



SECTION 6. Section 102-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beachboy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;
- (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park,<sup>3</sup> and operating under agreement with the appropriate agency solely for such purposes, aims, and goals; [and]
- (10) For operations of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in a writing that shall be included in the contract file[-]; and
- (11) For operation of concession or concession spaces at the convention center under chapter 201B.”

SECTION 7. Section 201B-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a)<sup>4</sup> Except as otherwise limited by this chapter, the board may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;<sup>5</sup> provided that the authority may enter into contracts and agreements for a period of up to five years; and provided further that the authority may enter into agreements for the use of the convention center facility for a period of up to ten years;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
- (6) Through its executive director represent the authority in communications with the governor and with the legislature;

- (7) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76~~[-77,]~~ and 78;
- (8) Through its executive director purchase supplies, equipment, or furniture;
- (9) Through its executive director allocate the space or spaces which are to be occupied by the authority and appropriate staff;
- (10) Engage the services of qualified persons to implement the State's tourism marketing plan or portions thereof as determined by the board;
- (11) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (12) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and<sup>6</sup> from such insurers as it deems desirable;
- (13) Contract for, and accept gifts or grants in any form from any public agency or any other source~~[-]~~, including any revenues or proceeds arising from the operation or use of the convention center;
- (14) Create a vision and develop a long range plan for tourism in Hawaii, including product development, infrastructure, and diversification issues;
- (15) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State;
- (16) Develop and implement the state tourism strategic marketing plan, which shall be updated every three years, to promote and market the State as a desirable visitor destination;
- (17) Have a permanent, strong focus on marketing and promotion;
- (18) Conduct market development-related research as necessary;
- (19) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
- (20) Work to eliminate or reduce barriers to travel in order to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
- (21) Market and promote sports-related activities and events;
- (22) Coordinate the development of new products with the public and private sectors, including the development of sports, culture, health, education, business, and eco-tourism;
- (23) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
- (24) Encourage the development of tourism educational, training, and career counseling programs; ~~[and]~~<sup>7</sup>
- (25) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary~~[-]~~;<sup>8</sup>
- (26)<sup>9</sup> Set and collect rents, fees, charges, or other payments for the lease, use, occupancy, or disposition of the convention center facility without regard to chapter 91;
- (27) Notwithstanding the provisions of chapter 171, acquire, lease as lessee or lessor, own, rent, hold, and dispose of the convention center facility in the exercise of its powers and the performance of its duties under this chapter; and
- (28) Acquire by purchase, lease, or otherwise, and develop, construct, operate, own, manage, repair, reconstruct, enlarge, or otherwise effec-

tuates, either directly or through developers, a convention center facility."

SECTION 8. Section 201B-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The authority may enter into contracts and agreements that include the following:

- (1) Tourism promotion, marketing, and development;
- (2) Market development-related research;
- (3) Product development and diversification issues;
- (4) Promotion, development, and coordination of sports-related activities and events;
- (5) Promotion of Hawaii, through a coordinated statewide effort, as a place to do high technology business;
- (6) Reduction of barriers to travel;
- (7) Tourism public information and educational programs;
- (8) Programs to monitor and investigate complaints about the problems resulting from the tourism industry in the State; ~~and~~
- (9) Marketing, management, use, operation, or maintenance of the convention center facility, including the purchase or sale of goods or services, logo items, concessions, sponsorships, and license agreements, or any use of the convention center facility as a commercial enterprise; provided that effective January 1, 2003, and thereafter the contract for management of the convention center facility shall include marketing for all uses of the facility;

~~[(9)]~~ (10) Any and all other activities necessary to carry out the intent of this chapter[;

~~provided that for the purposes of continuity, the Hawaii Visitors and Convention Bureau shall be the designated agency to conduct the marketing and promotion of the State until the end of fiscal year 1998-1999 or until a date specified by the board]."~~

SECTION 9. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) ~~[Beginning on January 1, 1999 [.] revenues]~~ Revenues collected under this chapter shall be distributed as follows:

- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center ~~[capital and operations]~~ enterprise special fund established under section [206X-10.5;] 201B-\_\_\_; provided that beginning January 1, 2002, if the amount of the revenue collected under this paragraph exceeds \$31,000,000 in any calendar year, revenues collected in excess of \$31,000,000 shall be deposited into the general fund;
- (2) 37.9 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section 201B-11; and
- (3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent.

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection, and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection."

SECTION 10. Act 96, Session Laws of Hawaii 1988, as amended by Act 159, Session Laws of Hawaii 1992; Act 241, Session Laws of Hawaii 1993; Act 75, Session Laws of Hawaii 1994; Act 156, Session Laws of Hawaii 1998; and Act 98, Session Laws of Hawaii 1999, is amended by amending section 3 to read as follows:

"SECTION 3. This Act [~~shall automatically expire~~] is repealed on June 30, 2000. The auditor shall continue to audit and monitor the progress made by the convention center authority in resolving various outstanding issues and problems so as to assure the legislature that these issues have been addressed on or before June 30, 2000. By February 28, 2000, the auditor shall submit a management audit report to the legislature on the effectiveness of the steps taken by the convention center authority to resolve traffic, noise, and other outstanding claims against the authority. The management audit may include financial audit issues that the auditor deems appropriate.

In the event any judicial or quasi-judicial proceeding is commenced regarding the validity of this Act or any section of this Act, or any action of the authority, the running of the period shall be suspended until a final nonappealable determination is made in the judicial or quasi-judicial proceeding."

SECTION 11. There is appropriated out of the convention center enterprise special fund the sum of \$46,000,000, or so much thereof as may be necessary for fiscal year 2002-2003, to be expended by the Hawaii tourism authority for the purposes of this Act.

SECTION 12. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the convention center authority pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable by reference to the Hawaii tourism authority by this Act, shall remain in full force and effect. Effective June 30, 2000, every reference to the convention center authority in the Hawaii Revised Statutes shall be construed as a reference to the Hawaii tourism authority.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>10</sup>

SECTION 14. This Act shall take effect on July 1, 2002; provided that section 10 of this Act shall take effect retroactive to June 29, 1999; provided further that section 12 shall take effect retroactive to June 30, 2000; provided further that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, by section 9 of Act 142, Session Laws of Hawaii 1998.

(Became law on July 1, 2002, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

#### Notes

1. Prior to amendment "201B-11" appeared here.
2. Prior to amendment "Emergency budget and" appeared here.
3. Comma should be underscored.
4. Prior to amendment, the designation of subsection (a) did not appear here.
5. Prior to amendment "," appeared here.
6. "And" should be underscored.
7. Prior to amendment "and" did not appear here.
8. Prior to amendment "and" appeared here.
9. Prior to amendment "(26) Do all things necessary to carry out its purposes and exercise the powers given and granted in this chapter." appeared here.
10. Edited pursuant to HRS §23G-16.5.

ACT 254

H.B. NO. 1724

A Bill for an Act Relating to Special Number Plates for Military Service.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 249-9.2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Registration certificates and license plates issued under this section shall not be transferable to any other person. Special number plates for military service shall be assigned to ~~[only one]~~ a noncommercial passenger motor vehicle ~~[or one]~~, a noncommercial motorcycle, or motor scooter registered in the name of the qualified applicant and shall be ~~[limited to only one]~~ available in any category of special number plates for military service ~~[-; provided that, if the qualified applicant is the registered owner of a noncommercial passenger motor vehicle and a noncommercial motorcycle or motor scooter, a second special number plate for military service of the same or different category may be assigned to the qualified applicant's motorcycle or motor scooter].~~ Prior to the transfer of the ownership of the qualified person's vehicle to another party, the special number plates shall be surrendered to the director of finance as a condition to the issuance of replacement special number plates~~[-];~~ provided that the director of finance shall allow the survivor of the qualified person, upon request, to retain the front special number plate as a memorial.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

ACT 255

H.B. NO. 1768

A Bill for an Act Relating to Vehicle Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In July of 2001, Hawaii county stopped registering motorcycles constructed on “after market” or custom frames because they were stamped with a frame identification number and not the federal vehicle identification number (federal VIN). The result was that hundreds of custom motorcycles, many representing an investment ranging from about \$25,000 to more than \$50,000, could no longer be driven legally on roadways, and Big Island custom motorcycle assemblers and dealers could no longer sell their products or continue to pay their employees.

This problem occurred when the new Hawaii county administration attempted to comply with a 1994 department of transportation (DOT) memo that interpreted the ambiguous term “vehicle identification number” in section 286-45, Hawaii Revised Statutes, as requiring vehicles to have a federal VIN before they could be registered.

However, section 286-45, Hawaii Revised Statutes, does not require a federal VIN for custom vehicles assembled on after market frames. Instead, there is a gap in the law with regard to these reconstructed vehicles.

Enacted in 1969, section 286-45, Hawaii Revised Statutes, was intended to prevent thefts. It allowed the counties to use manufacturer vehicle identification numbers in place of motor numbers when filing vehicle registration records. This provided for uniformity between state and national vehicle identification records, which use the federal VIN.

The federal VIN is used to identify a vehicle assembled by a licensed manufacturer and does not apply to custom vehicles constructed on after market frames, which in many cases are not constructed by licensed manufacturers. Federal law does not specify a particular method of identifying custom vehicles and has left their identification to the states. However, in enacting section 286-45, Hawaii Revised Statutes, the 1969 legislature did not consider or provide a method for identifying these custom vehicles.

For years, Hawaii county has bridged this gap in the law in a reasonable manner, by interpreting the term "vehicle identification number" to allow custom motorcycles to be identified and registered according to the manufacturer part numbers stamped on the frame to comply with federal motor vehicle part recall law. This serves the anti-theft purposes of Hawaii's registration law by allowing custom motorcycles to be identified with a unique, permanently affixed identifier.

In contrast, DOT's interpretation of "vehicle identification number" requires the federal VIN, a restriction which was never contemplated or intended by the legislature. Enforcement of DOT's interpretation has prevented many custom motorcycles from being registered, and has had a significant, negative economic impact on those that relied in good faith on Hawaii county's longstanding and reasonable interpretation of the registration law.

The purpose of this Act is to provide relief to custom motorcycle owners, assemblers, and dealers, by filling in the gap in the vehicle registration law and by exempting motorcycles from the definition of reconstructed vehicle. This Act defines the term "vehicle identification number" in chapter 286, Hawaii Revised Statutes, the highway safety law, to allow the county director of finance to identify and register a reconstructed vehicle by assigning it an identification number other than the federal VIN.

SECTION 2. Section 286-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

"Vehicle identification number" means the unique series of letters and numerals assigned to a vehicle either by the vehicle manufacturer or incomplete vehicle manufacturer as required by federal law, or by the county director of finance to identify a reconstructed vehicle, special interest vehicle, or motorcycle."

2. By amending the definition of "reconstructed vehicle" to read as follows:

"Reconstructed vehicle" means a vehicle that is registered to be operated on a public highway, and that is:

- (1) Assembled from new or used parts by a person other than a recognized manufacturer of new vehicles;
- (2) Modified to the extent that the identity of the vehicle's make, model, or type is obscured by material changes in its appearance; or
- (3) Modified by the removal, addition, alteration, or substitution of other than original replacement essential parts, including the vehicle's body, power train, steering system, suspension system, exhaust system, intake system, or bumper system;

excluding ordinary body repair that does not change the exterior structure of the vehicle. The term does not include a special interest vehicle[.] or a motorcycle."

SECTION 3. Section 286-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The county director of finance shall examine and to the best of the director’s ability determine the genuineness and regularity of every registration and transfer of registration of a vehicle as in this part provided, in order that every certificate issued for a vehicle shall contain true statements of the ownership thereof, and to prevent the registration of a vehicle by any person not entitled thereto, and the director of finance may require any applicant to furnish such information, in addition to that contained in the application, as may be necessary to satisfy the director of finance of the truth and regularity of the application. The director of finance may accept any county certificate of title issued for a vehicle as prima facie evidence of ownership for registration and transfer of registration. The director may issue vehicle identification numbers for reconstructed vehicles, special interest vehicles, or motorcycles, which do not have vehicle identification numbers if the director determines that the requirements of this section have been met.

The county director of finance may register a motorcycle with an after market frame, using the vehicle identification number of the frame as issued by the incomplete vehicle manufacturer of the frame. A bill of sale and Manufacturers Statement of Origin for the frame, engine, and transmission must be presented and retained as a part of the permanent county registration records. If a Manufacturers Statement of Origin is not available for the engine and transmission due to the use of a used or reconstructed engine, transmission, or both, then a bill of sale or other proof of ownership, satisfactory to the director of finance must be presented.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

## ACT 256

H.B. NO. 1842

A Bill for an Act Relating to the Practice of Pharmacy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that active participation of pharmacists in drug therapy improves patient outcomes, improves medication safety, and reduces the cost of health care. Increasingly, the complexity of drug therapy being provided inside and outside of hospitals and health care facilities requires the pharmacist to participate in the treatment of, and be the advocate for, the patient, in collaboration with other health care professionals. The legislature further finds that pharmaceutical care should help patients make the best use of their medications to achieve desired therapeutic outcomes.

The purpose of this Act is to enable pharmacists to provide their services in a broader range of clinical settings, including pharmacies and health care facilities.

SECTION 2. Section 461-1, Hawaii Revised Statutes, is amended by amending the definition of “practice of pharmacy” to read as follows:

““Practice of pharmacy” means [~~the~~]:

- (1) The interpretation and evaluation of prescription orders; the compounding, dispensing, and labeling of drugs and devices (except labeling by a

- manufacturer, packer, or distributor of nonprescription drugs and commercially legend drugs and devices); the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising when necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and devices; [performing]
- (2) Performing the following procedures or functions [in a licensed acute care hospital] as part of the care provided by and in concurrence with a "health care facility" and "health care service" as defined in section 323D-2, or a "pharmacy" or a licensed medical doctor, or a "managed care plan" as defined in section 432E-1, in accordance with policies, procedures, or protocols developed collaboratively by health professionals, including physicians and surgeons, pharmacists, and registered nurses, [with the concurrence of the facility administrator; ordering] and for which a pharmacist has received appropriate training required by these policies, procedures, or protocols:
- (A) Ordering or performing routine drug therapy related patient assessment procedures [including temperature, pulse, and respiration; ordering]
  - (B) Ordering drug therapy related laboratory tests; [administering drugs and biologicals by injection pursuant to a licensed medical doctor's order; and adjusting the dosage of a patient's drug regimen pursuant to a licensed medical doctor's or osteopathic physician's order or authorization; and the]
  - (C) Administering drugs orally, topically, or by injection, pursuant to the patient's licensed medical doctor's order, by a pharmacist having appropriate training that includes programs approved by the American Council of Pharmaceutical Education (ACPE), curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
  - (D) Administering immunization by injection to persons eighteen years of age or older, by a pharmacist having appropriate training that includes programs approved by the ACPE, curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
  - (E) As authorized by a licensed medical doctor's written instructions, initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's licensed medical doctor and related to the condition for which the patient has been seen by the licensed medical doctor; provided that the pharmacist shall issue written notification to the patient's licensed medical doctor or enter the appropriate information in an electronic patient record system shared by the licensed medical doctor, within twenty-four hours;
  - (F) Transmitting a valid prescription to another pharmacist for the purpose of filling or dispensing; or
  - (G) Providing consultation, information, or education to patients and health care professionals based on the pharmacist's training and for which no other licensure is required; and
- (3) The offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy. [Licensed acute care hospital means an acute care



hospital licensed by the department of health pursuant to chapter 321.  
~~Licensed medical doctor]~~

“Licensed medical doctor” means a medical doctor licensed by the board of medical examiners pursuant to chapter 453 or the board of osteopathic examiners under chapter 460.”

SECTION 3. Section 328-6, Hawaii Revised Statutes, is amended to read as follows:

“**§328-6 Prohibited acts.** The following acts and the causing thereof within the State by any person are prohibited:

- (1) The manufacture, sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;
- (2) The adulteration or misbranding of any food, drug, device, or cosmetic;
- (3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 328-11, 328-12, or 328-17;
- (5) The dissemination of any false advertisement;
- (6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by sections 328-22[, ] and 328-23 to 328-27, or to permit access to or copying of any record as authorized by section 328-23;
- (7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom ~~[he]~~ the person received in good faith the food, drug, device, or cosmetic;
- (8) The removal or disposal of a detained or embargoed article in violation of sections 328-25 to 328-27;
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being adulterated or misbranded;
- (10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by ~~[regulations promulgated]~~ rules adopted under this part or regulations adopted under the Federal Act;
- (11) The ~~[using,]~~ use, on the labeling of any drug or in any advertisement relating to the drug, of any representation or suggestion that an application with respect to the drug is effective under section 328-17, or that the drug complies with ~~[the provisions of such]~~ that section;
- (12) The ~~[using]~~ use by any person to ~~[his]~~ the person's own advantage, or revealing other than to the department of health or to the courts when relevant in any judicial proceeding under this part, any information acquired under authority of section 328-11, 328-12, 328-17, or 328-23, concerning any method or process which as a trade secret is entitled to protection;
- (13) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner who makes written request for information as to the drug, true and correct copies of

all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this part;

- (14) (A) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or
- (B) Selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subparagraph (A) [~~hereof~~]; or
- (C) Making, selling, disposing of, or causing to be made, sold, or disposed of, or keeping in possession, control, or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;
- (15) Except as provided in part VI[,] and section 461-1, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without express permission in each case of the person ordering or prescribing;
- (16) The distribution in commerce of a consumer commodity as defined in this part, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to [~~the provisions of~~] this part and of rules adopted under authority of this part; provided that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:
  - (A) Are engaged in the packaging or labeling of such commodities; or
  - (B) Prescribe or specify by any means the manner in which such commodities are packaged or labeled;
- (17) The selling or dispensing in restaurants, soda fountains, drive-ins, lunch wagons, or similar public eating establishments of imitation milk and imitation milk products in place of fresh milk and fresh milk products respectively; of liquid or dry products which simulate cream but do not comply with content requirements for cream in place of cream; of non-dairy frozen desserts which do not comply with content requirements for dairy frozen desserts in place of dairy frozen desserts; and of any other imitation food or one made in semblance of a genuine food in place of such genuine food, unless the consumer is notified by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements informing of such substitution, to include but not limited to the substitution of imitation milk in milk shake and malted milk drinks;
- (18) Wilfully and falsely representing or using any devices, substances, methods, or treatment as effective in the diagnosis, cure, mitigation, treatment, or alleviation of cancer. [~~The provisions of this~~] This paragraph shall not apply to any person who depends exclusively upon

prayer for healing in accordance with teachings of a bona fide religious sect, denomination, or organization, nor to a person who practices such teachings;

- (19) The selling or offering for sale at any food facility which serves or sells over the counter directly to the consumer an unlabeled or unpackaged food that is a confectionery which contains alcohol in excess of one-half of one per cent by weight unless the consumer is notified of that fact by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements;
- (20) The sale to a person below the age of twenty-one years of any food which is a confectionery which contains alcohol in excess of one-half of one per cent by weight.”

SECTION 4. Section 328-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to the requirements enumerated in subsection (a), a prescription drug shall be dispensed only:

- (1) By a pharmacist pursuant to a valid prescription[;] or section 461-1;
- (2) By a medical oxygen distributor pursuant to a prescription or certificate of medical necessity; provided that the drug to be dispensed is medical oxygen; or
- (3) By a practitioner to an ultimate user; provided that:
  - (A) The practitioner shall inform the patient, prior to dispensing any drug other than a professional sample, that the patient may have a written, orally ordered, or electronically transmitted or conveyed prescription directed to a pharmacy or a medical oxygen distributor of the patient’s own choice;
  - (B) The practitioner shall promptly record in the practitioner’s records:
    - (i) The prescription in full;
    - (ii) The name, strength, and quantity of the drug, and specific directions for the drug’s use;
    - (iii) The date the drug was dispensed; and
    - (iv) The name and address of the person for whom the drug was prescribed or the name of the owner of the animal for which the drug was prescribed;
  - (C) The records described in subparagraph (B) shall be subject to the inspection of the department or its agents at all times; and
  - (D) No undisclosed rebate, refund, commission, preference, discount, or other consideration, whether in the form of money or otherwise, has been offered to the practitioner as compensation or inducement to dispense or prescribe any specific drug in preference to other drugs that might be used for the identical therapeutic indication.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

## ACT 257

H.B. NO. 2166

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 39A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . ASSISTING NOT-FOR-PROFIT PRIVATE  
NONSECTARIAN AND SECTARIAN ELEMENTARY SCHOOLS,  
SECONDARY SCHOOLS, COLLEGES, AND UNIVERSITIES SERVING  
THE GENERAL PUBLIC**

**§39A- Definitions.** Whenever used in this part, unless a different meaning clearly appears from the context:

“Department” means the department of budget and finance.

“Project agreement” means any agreement entered into under this part by the department with a project party providing for the issuance of special purpose revenue bonds to finance facilities of the project party or for the project party or to loan the proceeds of such bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public, including, without limitation, on any loan agreement.

“Project party” means a not-for-profit private nonsectarian and sectarian elementary school, secondary school, college, and university that serves the general public.

“Refinancing of outstanding obligations” or “refinancing” means the liquidation; the retirement; the provision for retirement through the proceeds of bonds issued by the State of any indebtedness of a project party incurred to finance or help finance a lawful purpose of the project party not financed pursuant to this part; or the consolidation of such indebtedness with indebtedness of the State incurred by the project party related to the purpose for which the indebtedness of the project party was initially incurred.

“Special purpose revenue bonds” or “bonds” means bonds, notes, or other evidence of indebtedness of the State issued pursuant to this part.

**§39A- Department powers as to private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7, but with the approval of the governor, to:
  - (A) Enter into and carry out a project agreement or an amendment or supplement to an existing project agreement with a project party; and
  - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improve-

ment, betterment, extension, or refinancing of outstanding obligations related to a project;

- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for this project, to pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; to pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds; and to pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related to the project agreement; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part of the project for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.

**§39A- Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any of its political subdivisions, or any departments or boards thereof, with respect to: the construction, operation, and maintenance of projects; compliance with education or zoning laws or regulations; obtaining of building permits; and compliance with building codes, health codes, and other laws, ordinances, or rules of a similar nature pertaining to the project. Such laws shall apply to the party or another user to the same extent that it would be if the costs of the project were directly financed by the project party.

**§39A- Conditions precedent to negotiating and entering into a project agreement.** Prior to entering into negotiations with any project party, the department shall require that the State be reimbursed for any costs and expenses (direct or indirect) incurred by it in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into. The department may further require the deposit of moneys with it for such reimbursement. The department shall return any amount of the deposit exceeding the amount required to reimburse the State to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

The department shall not enter into any project agreement with respect to any project unless the department shall first find and determine either that the project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or some other reason, or that the obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of

economic assets or experience in the type of enterprise to be undertaken through the project, or some other reason.

**§39A- Project agreement.** No special purpose revenue bonds shall be issued unless, at the time of issuance, the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which such revenue bonds are to be issued.

Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party to:

- (1) Pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, such sum at such time in such amount that will be at least sufficient to:
  - (A) Pay the principal and interest on all special purpose revenue bonds issued with respect to the project as and when they become due, including any premium payable upon any required redemption of such bonds;
  - (B) Establish or maintain such reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
  - (C) Pay all fees and expenses, including the fees and expenses of the paying agents and trustees, incurred in connection with such special purpose revenue bonds; and
  - (D) Pay the expenses (direct or indirect) incurred by the State, as determined by the department, in administering such bonds or in carrying out the project agreement; and
- (2) Operate, maintain, and repair the project as long as it is used in the provision of not-for-profit private nonsectarian and sectarian elementary, secondary, college-level, and university-level education to the general public, and to pay all costs of its operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State.

**§39A- Issuance of special purpose revenue bonds to finance projects.**

In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance the costs of facilities of or for project parties or to loan the proceeds of such bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds, and the provisions of part III of chapter 39 shall not apply. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include the following: financing charges, fees, the expenses of trustees, and the cost of paying agents to issue special purpose revenue bonds to fund the project; interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed or refinanced from the proceeds of the bonds accruing or incurred prior to and during the period of construction, not to exceed twelve months thereafter; amounts necessary to establish or increase reserves for the special purpose revenue bonds; the cost of plans, specifications, studies, surveys, and estimates of costs and of revenues; other expenses incidental to determining the feasibility or practicability of the project; administration expenses; the cost of interest incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; fees and expenses incurred in connection with the refinancing of outstanding

obligations; other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the project; the financing or refinancing of the project and placing the project in operation; and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public and that the issuance of special purpose revenue bonds to finance or refinance facilities of or for project parties or to loan the proceeds of the bonds to assist project parties is in the public interest. The legislature also finds and determines that the exercise of the powers vested in the department by this part are pursuant to separate acts of the legislature, each of which shall be enacted in a nondiscriminatory manner on the basis of neutral, secular criteria and will not in any manner violate the First Amendment of the Constitution of the United States or article I, section IV, of the Constitution of the State of Hawaii.

**§39A- Authorization of special purpose revenue bonds.** (a) Special purpose revenue bonds for each single project or multi-project program for not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of one, or the combined authority of more than one, separate act of the legislature.

The State may combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities, separately authorized as aforesaid, in the total amount of not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds.

The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times (not to exceed forty years from their date or dates), shall have such rank or priority, and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached, and the manner of execution of the special purpose revenue bonds. The department shall also fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine. Provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon pertaining to such a bond become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for the lost, stolen, or destroyed bond or coupon.

The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has:

- (1) Paid the reasonable expense and charges in connection therewith;
- (2) In the case of a lost, stolen, or destroyed bond or coupon, has filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that such bond or coupon was lost, stolen, or destroyed and that the holder was the owner; and
- (3) Has furnished indemnity satisfactory to the department.

(d) In its discretion, the department may direct that CUSIP identification numbers shall be printed on the bonds. In the event that the numbers are imprinted on the bonds:

- (1) No such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and
- (2) No liability shall attach to the department or any of its officers or agents, including any fiscal agent, paying agent, or registrar for the bonds, because of the numbers or their use, including any use made by the department or any of its officers or agents, or because of any inaccuracy, error, or omission with respect thereto or in such use.

In its discretion, the department may require that all costs of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds.

For the purposes of this subsection, "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

**§39A- Special purpose revenue bond anticipation notes.** Whenever the department shall have authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale thereof, for the purpose for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of the sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which the bonds would be secured; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of the bonds, the maximum amount of bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and details of the notes shall be governed by the provision of this part with respect to special purpose revenue bonds insofar as the same may apply; provided that each note, together with all renewals and extensions of the note, or refundings of the note by other notes issued under this section, shall mature within five years from the date of the original note.



**§39A- Powers with respect to and security for special purpose revenue bonds.** To secure the payment of any of the special purpose revenue bonds issued pursuant to this part, including interest on the bonds, or in connection with the bonds, the department shall have the power to:

- (1) Pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed or refinanced from bond proceeds, including interest on the bonds, and to covenant against pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues;
- (2) Pledge and assign the interest of the department under the project agreement and other related agreements and the rights, duties, and obligations of the department thereunder, including the right to receive revenues;
- (3) Covenant as to the use and disposition of the proceeds from the sale of the bonds;
- (4) Covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;
- (5) Covenant and prescribe as to what occurrences shall constitute “events of default” and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (6) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by the department of any covenant, condition, or obligation;
- (7) Designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary, convenient, or desirable to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other related agreements as well as the rights, duties, and obligations of the department thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds. The department may also authorize and empower the trustee to perform such functions with respect to payment, purchase, registration, transfer, exchange, and redemption as the department may deem necessary, advisable, or expedient, including, without limitation,

the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction of the bonds and coupons according to the law;

- (8) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties; and
- (9) Make such covenants and perform any acts as may be necessary, convenient, or desirable to secure the bonds, although such covenants, acts, or items may not be enumerated here.

The department shall have the power to do all things in the issuance of the bonds and for their security that are consistent with the Constitution of the State of Hawaii.

**§39A- Security for special purpose revenue bonds.** Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement, project agreements, or other supplemental agreements entered into with respect to the project or projects for the financing of which the special purpose revenue bonds were issued. The special purpose revenue bonds shall be secured solely by such revenues and by the pledges and assignments authorized by this part. Subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, all special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenue derived from the project agreement or agreements with respect to the project or projects for which the bonds were issued. The lien shall be over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the right and privilege may be reserved by the department in the trust indenture securing an issue of special purpose revenue bonds to issue subsequently additional special purpose revenue bonds, subject to legislative authorization of the issue as provided in section 39A- . The department may also permit the project party or another party on its behalf to incur debt, from time to time, payable from the revenues derived from the project agreement on a parity with the first issue of the special purpose revenue bonds. Any subsequent issue of special purpose revenue bonds and other debt issued or incurred in accordance with the provisions of the trust indenture shall be secured equally and ratably with the first issue of the special purpose revenue bond by a lien on the revenues in accordance with this part and without priority based on the date of sale, date of execution, or date of delivery.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds. The rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage.

**§39A- Special purpose revenue bonds not a general obligation of the State.** No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of the taxing power of the State to pay such bonds or the interest on the bonds, and no moneys other than the revenues pledged to such bonds shall be applied toward their payment. Each special purpose revenue bond issued under this part shall recite in substance that such bond, including interest on the bond, is not a general obligation of the State and is payable

solely from the revenues pledged to the payment thereof and that such bond is not secured directly or indirectly by the full faith and credit of the State, by the general credit of the State, or by any revenue or taxes of the State other than the revenues specifically pledged thereto.

**§39A- Validity of special purpose revenue bonds.** The special purpose revenue bonds bearing the signature or facsimile signature of officers on the date of the signing of the bonds shall be valid and sufficient for all purposes, notwithstanding that before the delivery of and payment for the bonds, all the persons whose signatures appear on the bonds shall have ceased to be officers of the department. The special purpose revenue bonds shall contain a recital that they are issued pursuant to this part, and the recital shall be conclusive evidence of their validity and of the regularity of their issuance.

**§39A- Use of revenues derived from project agreement.** The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premium (if any), and interest on the bonds for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the project, including reserves.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State.

**§39A- Special purpose revenue bonds exempt from taxation.** Special purpose revenue bonds and the income derived from the bonds issued pursuant to this part shall be exempt from all state, county, and municipal taxation, except for inheritance, transfer, and estate taxes.

**§39A- Federal tax-exempt status.** To the extent practicable, special purpose revenue bonds issued pursuant to this part shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income-tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income-tax purposes.

**§39A- Exemption from taxation of department property.** All revenues derived by the department from any project or under the project agreement pertaining to it shall be exempt from all state, county, and municipal taxation. Any right, title, and interest of the department in any project shall also be exempt from all state, county, and municipal taxation.

Except as otherwise provided by law, the interest of the project party or user of such project under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user.

**§39A- Refunding special purpose revenue bonds.** The legislature, by an act passed by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption.

The legislature is further authorized to provide, by an act passed by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing or refinancing the cost of a project or improvement or expansion of the project; and
- (2) Refunding special purpose revenue bonds that shall have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay special purpose revenue bonds being refunded. Moreover, nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay the special purpose revenue bonds being refunded, which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details regarding the bonds, the rights and remedies of the bondholders, and the rights, powers, privileges, duties, and obligations of the department with respect to the bonds and bondholders, shall be governed by the foregoing provisions of this part insofar as may be applicable.

**§39A- Status of special purpose revenue bonds under Uniform Commercial Code.** Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration.

**§39A- Special purpose revenue bonds as legal investments and lawful security.** The special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State and its political corporations or subdivisions. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and of the counties or other political corporations or subdivisions of the State. The bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons pertaining to the bonds.

**§39A- Access to and public disclosure of financial records of project party.** (a) Each project party with a project agreement with the department shall allow the department full access to its financial records. Upon the request of the department for the examination of the financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purpose of this section.

**§39A- Estimate of benefits.** (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on a comparison between the use of the proceeds of the special purpose revenue bonds instead of other means of financing and shall be in terms of dollars projected to be or actually saved by consumers of the services of the project party. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing less costly services by a project party to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section.

**§39A- Construction of this part.** The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall control.”

SECTION 2. This Act shall take effect upon its approval and upon ratification of constitutional amendments authorizing the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

(Approved July 5, 2002.)

## ACT 258

H.B. NO. 2169

A Bill for an Act Relating to Coffee.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 486-120.6, Hawaii Revised Statutes is amended to read as follows:

**“§486-120.6 [Kona] Hawaii-grown roasted or instant coffee; [minimum content and] labeling requirements.** (a) In addition to all other labeling requirements, [all] the identity statement used for labeling or advertising roasted or instant coffee [which is] produced in whole or in part from [Kona] Hawaii-grown green coffee beans shall meet the following requirements:

(1) [Identity]<sup>1</sup>:

- (A) Only] For roasted or instant coffee [which] that contains one hundred per cent [Kona] Hawaii-grown coffee by weight [may be labeled or advertised as roasted or instant Kona coffee.
  - (B) Roasted or instant coffee containing not less than ten per cent but less than one hundred per cent Kona coffee by weight shall be labeled or advertised as “Kona coffee blend”, “Kona blend coffee”, or “blended Kona coffee”. In addition, the following statement shall appear directly below the selected blend wording on the front panel of the label: “contains not less than ten per cent Kona coffee”; however, the actual percentage may be substituted in the statement.
- (2) the identity statement shall consist of either:
- (A) The geographic origin of the Hawaii-grown coffee, in coffee consisting of beans from only one geographic origin, followed by the word “Coffee”; provided that the geographic origin may be immediately preceded by the term “100%”; or
  - (B) The per cent coffee by weight of one of the Hawaii-grown coffees, used in coffee consisting of beans from several geographic origins, followed by the geographic origin of the weight-specified coffee and the terms “Coffee” and “All Hawaiian”;
- (2) For roasted or instant coffee consisting of a blend of one or more Hawaii-grown coffees and coffee not grown in Hawaii, the per cent coffee by weight of one of the Hawaii-grown coffees used in the blend, followed by the geographic origin of the weight-specified coffee and the term “Coffee Blend”; and
- (3) Each word or character in the identity statement shall be of the same type size and shall be contiguous [and]. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight or three sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight. The identity statement shall be conspicuously displayed without any intervening material[:] in a position above the statement of net weight. Upper and lower case letters may be used interchangeably in the identity statement.
- (b) A listing of the geographic origins of the various Hawaii-grown coffees and the regional origins of the various coffees not grown in Hawaii that are included in a blend may be shown on the label. If used, this list shall consist of the term “Contains:”, followed by, in descending order of per cent by weight and separated by commas, the respective geographic origin or regional origin of the various coffees in the blend that the manufacturer chooses to list. Each geographic origin or regional origin may be preceded by the per cent of coffee by weight represented by that geographic origin or regional origin, expressed as a number followed by the per cent sign. The type size used for this list shall not exceed half that of the identity statement. This list shall appear below the identity statement, if included on the front panel of the label.
- [(b)] (c) It shall be a violation of this section:
- (1) To use [the term “Kona coffee”, “100% Kona coffee”,] the identity statement specified in subsection (a)(1)(A) or similar terms in labeling or advertising unless the package of roasted or instant coffee contains one hundred per cent [Kona] coffee[:] from that one geographic origin;

- (2) To use ~~[the term “Kona”]~~ a geographic origin in labeling or advertising, including in conjunction with a coffee style or in any other manner, if the roasted or instant coffee contains less than ten per cent [Kona] coffee by weight[.] from that geographic origin;
- (3) To use a geographic origin in advertising roasted or instant coffee, including advertising in conjunction with a coffee style or in any other manner, without disclosing the percentage of coffee used from that geographic origin as described in subsection (a)(1)(B) and (2);
- (4) To use a geographic origin in labeling or advertising roasted or instant coffee, including in conjunction with a coffee style or in any other manner, if the green coffee beans used in that roasted or instant coffee do not meet the grade standard requirements of rules adopted under chapter 147;
- (5) To misrepresent, on a label or in advertising of a roasted or instant coffee, the per cent coffee by weight of any coffee from a geographic origin or regional origin; or
- (6) To use the term “All Hawaiian” on a label or in advertising of a roasted or instant coffee if the roasted or instant coffee is not produced entirely from green coffee beans produced in geographic origins defined in this chapter.

(d) Roasters, manufacturers, or other persons who package roasted or instant coffee covered by this section shall maintain, for a period of two years, records on the volume and geographic origin or regional origin of coffees purchased and sold and any other records required by the department for the purpose of enforcing this section. Authorized employees of the department shall have access to these records during normal business hours.

~~[(e)]~~ (e) For the purpose of this section:

~~[(1) “Kona coffee”]~~ “Geographic origin” means [coffee that is grown in] the [geographical] geographic regions [identified as North Kona and South Kona districts on the island of Hawaii and which meets the grade standard requirements as] in which Hawaii-grown green coffee beans are produced, as defined in rules adopted under chapter 147[.]; provided that the term “Hawaiian” may be substituted for the geographic origin “Hawaii”.

~~[(2)]~~ “Per cent [Kona] coffee by weight” means the percentage calculated by dividing the weight in pounds of roasted [Kona] green coffee beans of one geographic or regional origin used in a production run of roasted or instant coffee, by the total weight in pounds of the roasted green coffee beans used in that production run of roasted or instant coffee, and multiplying the quotient by one hundred.”

SECTION 2. Manufacturers, roasters, and other persons having existing supplies of labels that are not in compliance with this Act shall have one year from the effective date of this Act in which to use them.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

#### Note

1. Prior to amendment “statement” appeared here.

## ACT 259

S.B. NO. 2046

A Bill for an Act Relating to Guide Dogs, Signal Dogs, and Service Animals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 711, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§711- Causing injury or death to a guide dog, signal dog, or service animal.** (1) A person commits the offense of causing injury or death to a guide dog, signal dog, or service animal if:

- (a) The person recklessly causes injury to or the death of any guide dog, signal dog, or service animal, while the dog is in the discharge of its duties; or
- (b) The person is the owner of a dog and recklessly permits that dog to attack a guide dog, signal dog, or service animal while that dog is in the discharge of its duties, resulting in the injury or death of the guide dog, signal dog, or service animal.

(2) Any person who commits the offense of causing injury or death to a guide dog, signal dog, or service animal shall be punished as follows:

- (a) For a first offense by a fine of not more than \$2,000, imprisonment of not more than thirty days, or both; and
- (b) For a second or subsequent offense by a fine of not more than \$5,000, imprisonment of not more than thirty days, or both.

(3) Any person who is convicted of a violation of this section shall be ordered to make restitution to:

- (a) The person with a disability who has custody or ownership of the guide dog, signal dog, or service animal, for any veterinary bills and out-of-pocket costs incurred as a result of the injury to the dog; and
- (b) The person or organization that incurs the cost of retraining or replacing the animal, for the cost of retraining or replacing the animal if it is disabled or killed.

(4) As used in this section, “guide dog”, “signal dog”, and “service animal” shall have the same meaning as in section 515-3(8).

**§711- Intentional interference with the use of a guide dog, signal dog, or service animal.** (1) A person commits the offense of intentional interference with the use of a guide dog, signal dog, or service animal if the person, with no legal justification, intentionally or knowingly:

- (a) Harms a guide dog, signal dog, or service animal; or
- (b) Strikes or kicks a guide dog, signal dog, or service animal;

while the guide dog, signal dog, or service animal is in the discharge of its duties.

(2) Intentional interference with the use of a guide dog, signal dog, or service animal is a misdemeanor.

(3) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(4) As used in this section, “guide dog”, “signal dog”, and “service animal” shall have the same meaning as in section 515-3(8).”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.



## ACT 260

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 260

S.B. NO. 2106

A Bill for an Act Relating to Marriage and Family Therapists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the auditor's 2002 sunset evaluation report on marriage and family therapists made recommendations for legislative action to be taken in the event that the legislature continues the regulation of marriage and family therapists.

The purpose of this Act is to implement some of those recommendations by removing the law's sunset date and authorizing the director of commerce and consumer affairs to enter into reciprocity agreements allowing the recognition of licenses of marriage and family therapists licensed in other states.

SECTION 2. Chapter 451J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§451J- Reciprocity.** The director may enter into a reciprocity agreement with another state and issue a license to a marriage and family therapist who is licensed in that state; provided that the requirements for a license in that state are deemed by the director to be at least as stringent as the current requirements for a license in this State.”

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[(1) Chapter 451J (marriage and family therapists) shall be repealed on December 31, 2002; and~~  
(2) Chapter 457G (occupational therapy practice) shall be repealed on December 31, 2003.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 261

S.B. NO. 2337

A Bill for an Act Relating to Racing on Highways.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291C-103, Hawaii Revised Statutes is amended to read as follows:

**“§291C-103 Racing on highways.** (a) Except as provided in section 291C-149, no person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any race, competition, contest, test, or exhibition prohibited by this section.

(b) “Drag race” means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit.

(c) “Racing” means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

(d) “Exhibition of speed or acceleration” means the sudden acceleration of a vehicle resulting in the screeching of the vehicle’s tires which is done to intentionally draw the attention of persons present toward the vehicle.

(e) Any person who violates this section, except subsection (d), shall be fined not more than \$500 or imprisoned not more than six months, or both. Any person who violates subsection (d) shall be fined not more than \$500 or be sentenced to perform community service, or both.

(f) Any person who violates this section while operating a vehicle at a speed exceeding the posted speed limit by thirty miles per hour or more shall be subject to a fine of not more than \$2,000, a term of imprisonment of not more than one year, or both; provided that the following additional penalties shall also apply:

- (1) For an offense that occurs within five years of a prior conviction, a one-year license suspension;
- (2) For an offense that occurs within five years of two prior convictions:
  - (A) A three-year license suspension; and
  - (B) A vehicle owned by the defendant and used in the commission of the offense which has been used in at least two prior offenses that resulted in convictions may be ordered by the court to be subject to forfeiture under chapter 712A.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

A Bill for an Act Relating to Charter Schools.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-1182, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Up to a total of ~~[twenty-five]~~ twenty-three schools may be established as new century charter schools. These new century charter schools may be established by:

- (1) The creation of a new school; or
- (2) The creation of a new school, comprising programs or sections of existing public school populations and using existing public school facilities pursuant to subsection (b).”<sup>1</sup>

SECTION 2. Section 302A-1184, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-1184]]~~ **New century charter schools; exemptions.** Schools designated as new century charter schools shall be exempt from all applicable state laws, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
  - (A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decisionmaking;
  - (B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items;
  - (C) The agreements shall be funded from the current allocation or other sources of revenue received by the new century charter school; and
  - (D) These agreements may differ from the master contracts;
- (2) Discriminatory practices under section 378-2; and
- (3) Health and safety requirements.

New century charter schools shall be exempt from the state procurement code, chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. However, where possible, the new century charter school is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the new century charter school to any other provision of chapter 103D. New century charter schools shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public. In addition, notwithstanding any law to the contrary, as public schools and entities of the State, new century public charter schools shall not bring suit against any other entity or agency of the State of Hawaii.”

SECTION 3. Section 302A-1185, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1185 New century charter schools; funding.** (a) New century charter schools shall receive an allocation of state ~~[general]~~ funds based upon the operational and educational funding requirements of the schools; provided that:

- (1) Beginning in fiscal year ~~[1999-2000,]~~ 2001-2002, and every year thereafter, the auditor shall determine the appropriate allocation based on the total department general fund ~~[appropriation]~~ allocation for EDN 100, 200, 300, and 400 and ~~[per-pupil expenditure]~~ projected per pupil allocation for the ~~[previous]~~ current fiscal year; ~~[provided that the per pupil allocation to any new century charter school shall not exceed the department's average per pupil expenditure based upon the inclusion of similar cost items, in the previous fiscal year; and provided further that in setting the allocation, the auditor shall explicitly consider the advice of the superintendent and representatives of local school boards and indicate in the final determination the manner in which that advice was accommodated;]~~
- (2) Small schools with fewer than one hundred twenty students may be given a state subsidy or small school allotment, as determined by the department, to augment the per pupil allocation given; provided that if additional federal grant moneys are received, the auditor shall determine the appropriate portion of the federal grant moneys to be used to offset the small school allotment; provided further that the federal grant moneys shall not include federal impact aid;
- (3) The department may provide a limited start-up and planning grant formulated by the auditor to a charter school upon the issuance of its charter; provided further that the department shall provide appropriate transitional resources to a conversion charter school for its first year of operation as a charter school based on the department's allocation to the school for the year prior to conversion;
- (4) The auditor shall take into consideration any changes to the department's budget made by the legislature, ~~[or]~~ the governor ~~[and]~~, department-imposed restrictions, or any applicable collective bargaining negotiated amounts[.];<sup>2</sup> provided that the auditor shall exclude from the per pupil allocation funds for:
  - (A) Services that must be provided at the state level;
  - (B) Specific programs or projects that target individual schools, complexes, or districts;
  - (C) Grants in aid; and
  - (D) Resources of new facilities that target specific, new construction projects.
- (5) Any new century charter school may enter into an annual memorandum of agreement for centralized services to be provided by the department prior to the beginning of each school year, provided that:
  - (A) The allocation of the new century charter school shall be reduced in an amount based upon the per pupil amount expended by the department for such services; and
  - (B) The department may not retain new century charter school funds in excess of the actual cost of the service.
- ~~[(5) The allocation for self-contained special education students and for other special education students shall be adjusted appropriately to reflect the additional expenses incurred for students in these programs; provided that any increment to the per-pupil allocation made in this paragraph shall not exceed the increment available to all other public schools; and]~~
- (6) The department shall determine and provide the appropriate level of special education staff and services necessary to ensure that the student's educational needs as indicated in the individualized educational plans are met; and

[(6)] (7) The auditor shall develop a methodology for allocating funds that can be applied to alternative forms of public schools, including but not limited to new century charter schools[-]; and

(8) The auditor shall develop a methodology for allocating funds for conversion charter schools, by basing the allocation for each newly converted school on the EDN 100 and 200 program budgets, and upon written agreement between the conversion charter school's local school board and the department, specified sections of the EDN 300 and 400 program budgets the school received in the year prior to conversion; provided that the allocation may be adjusted to account for any changes that may be made by the legislature, the governor, department-imposed restrictions, or applicable collective bargaining negotiated amounts.

(b) All federal financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services related to federal grants and subsidies are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the charter school's ~~[allocation-]~~ federal grants and subsidies.

Any new century charter school shall be eligible to receive any supplementary financial grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to new century charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplementary grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the supplementary grant for which the services are used.

All additional funds that are generated by the local school boards, not from a supplementary grant, shall be separate and apart from allotted funds and may be expended at the discretion of the local school boards.

(c) To enable new century charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the department shall:

(1) Provide fifty per cent of a new century charter school's per pupil allocation based on the new century charter school's projected student enrollment no later than August 1 of each year; provided that the new century charter school shall submit to the department a projected student enrollment no later than May 15 of each year; and

(2) Provide the remaining per pupil allocation of a new century charter school based on the new century charter school's verified student enrollment no later than October 15 of each year; provided that the new century charter school shall submit to the department a verified student enrollment no later than September 15 of each year.

[(e)] (d) If, at any time, the new century charter school dissolves or is denied continuation, the State of Hawaii shall have first right, at no cost to the State, to all the assets and facilities of the new century charter school[-], except as otherwise provided in the detailed implementation plan."

SECTION 4. Section 302A-1186, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board shall initiate an independent evaluation of each new century charter school annually for the first two years after its establishment and every four years thereafter to assure organizational viability and compliance with applicable state laws, statewide student content and performance standards, and fiscal accountability; provided that each new century charter school established prior to July 1,

1998, shall be evaluated four years after July 1, 1998, and every four years thereafter. Upon a determination by the board that student achievement within a new century charter school does not meet the student performance standards, or that the new century charter school is not fiscally responsible, a new century charter school shall be placed on probationary status and shall have one year to bring student performance into compliance with statewide standards and improve the school's fiscal accountability. If a new century charter school fails to meet its probationary requirements, or fails to comply with any of the requirements of this section, the board, upon a two-thirds majority vote, may then deny the continuation of the new century charter school.

For the purposes of this subsection, “organizational viability” means that a new century charter school:

- (1) Has been duly constituted in accordance with its charter;
- (2) Has a local school board established in accordance with law and its charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services and to operate the facility in accordance with its charter; and
- (4) Maintains comprehensive records regarding students, employees, and complies with federal and state health and safety requirements.”

SECTION 5. Chapter 302A, Hawaii Revised Statutes, Part IV, Subpart D, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- New century charter schools; sports.** The department shall provide students at new century charter schools with the same opportunity to participate in athletics provided to students at other public schools. If a student at a new century charter school wishes to participate in a sport for which there is no program at the new century charter school, the department shall allow that student to participate in a comparable program of any public school in the complex in which the new century charter school is located.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>3</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

#### Notes

1. Subsection was enacted with amendments made by Act 2 of this session.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the ferry system from Iroquois Point to Aloha Tower proved beneficial to many Oahu commuters.

The legislature further finds and declares that the issuance of special facility revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to section 266-55, Hawaii Revised Statutes, mandating that special facility revenue bonds be issued as revenue bonds under part III of chapter 39, Hawaii Revised Statutes, the department of transportation, with the approval of the governor, is authorized to issue special facility revenue bonds in a total amount not to exceed \$15,000,000 in one or more series for the purpose of constructing facilities for a ferry service between West and East Oahu.

SECTION 3. The special facility revenue bonds authorized under this Act shall be issued pursuant to section 266-55, Hawaii Revised Statutes.

SECTION 4. There is appropriated out of the special facility revenue bond proceeds authorized by this Act the sum of \$15,000,000, or so much thereof as may be necessary for fiscal year 2002-2003, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of transportation.

SECTION 5. The authorization to issue special facility revenue bonds under this Act shall lapse on June 30, 2005.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 5, 2002.)

# PROPOSED CONSTITUTIONAL AMENDMENTS

## H.B. NO. 1012

A Bill for an Act Proposing an Amendment to Article III, Section 6, of the Hawaii Constitution, to Change the Eligibility to Serve as a Member of the Senate or House of Representatives.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to propose an amendment to article III, section 6, of the Constitution of the State of Hawaii to require that a candidate for a state legislative office be a qualified voter in the district in which the candidate seeks to represent prior to filing nomination papers for the primary election.

At present, candidates have until the day of the general election to qualify for office from a particular district, and are not required to become a qualified voter in that district until after the results of the primary election are known. The proposed amendment requires candidates to be a qualified voter in the district they aspire to represent as a condition of filing nomination papers and of having their name placed on the ballot at the primary election.

The amendment would improve public confidence in the election process by reducing the potential for candidates to seek office in a particular district based on their chances of success, and eliminating the ability of candidates to move to the appropriate district only upon a favorable result at the primary election. The amendment also increases the likelihood that candidates will be more knowledgeable and interested in the district for which they seek office by virtue of having lived in the community.

SECTION 2. Article III, section 6, of the Constitution of the State of Hawaii is amended to read as follows:

### “QUALIFICATIONS OF MEMBERS

**Section 6.** No person shall be eligible to serve as a member of the senate unless the person ~~[shall have]~~ has been a resident of the State for not less than three years, ~~[have]~~ has attained the age of majority and ~~[be]~~ is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the senatorial district from which the person seeks to be elected[:]; except that in the year of the first general election following reapportionment, but prior to the primary election, an incumbent senator may move to a new district without being disqualified from completing the remainder of the incumbent senator's term. No person shall be eligible to serve as a member of the house of representatives unless the person ~~[shall have]~~ has been a resident of the State for not less than three years, ~~[have]~~ has attained the age of majority and ~~[be]~~ is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected[:]; except that in the year of the first general election following reapportionment, but prior to the primary election, an incumbent representative may move to a new district without being disqualified from completing the remainder of the incumbent representative's term.”

SECTION 3. The question to be printed on the ballot shall be as follows:  
“Shall a candidate seeking office in a senatorial or representative district be required to become a qualified voter in that district prior to filing nomination papers for the primary election?”



## PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

### H.B. NO. 2848

A Bill for an Act Proposing Amendments to Article VII, Section 12, and Article X, Section 1, of the Constitution of the State of Hawaii to Authorize the State to Issue Special Purpose Revenue Bonds and use the Proceeds from the Bonds to Assist Not-For-Profit Private Elementary Schools, Secondary Schools, Colleges, and Universities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to:

- (1) Propose amendments to article VII, section 12, and article X, section 1, of the Constitution of the State of Hawaii to authorize the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist not-for-profit private elementary schools, secondary schools, colleges, and universities; and
- (2) Propose amendments to article VII, section 12 of the Constitution of the State of Hawaii to authorize the State to combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities, separately authorized, in the total amount of not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 2. Article VII, section 12, of the Constitution of the State of Hawaii is amended to read as follows:

#### **“DEFINITIONS; ISSUANCE OF INDEBTEDNESS**

**Section 12.** For the purposes of this article:

1. The term “bonds” shall include bonds, notes and other instruments of indebtedness.
2. The term “general obligation bonds” means all bonds for the payment of the principal and interest of which the full faith and credit of the State or a political subdivision are pledged and, unless otherwise indicated, includes reimbursable general obligation bonds.
3. The term “net revenues” or “net user tax receipts” means the revenues or receipts derived from:
  - a. A public undertaking, improvement or system remaining after the costs of operation, maintenance and repair of the public undertaking, improvement or system, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made; or
  - b. Any payments or return on security under a loan program or a loan thereunder, after the costs of operation and administration of the loan program, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made.

## PROPOSED CONSTITUTIONAL AMENDMENTS

4. The term “person” means an individual, firm, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing.

5. The term “rates, rentals and charges” means all revenues and other moneys derived from the operation or lease of a public undertaking, improvement or system, or derived from any payments or return on security under a loan program or a loan thereunder; provided that insurance premium payments, assessments and surcharges, shall constitute rates, rentals and charges of a state property insurance program.

6. The term “reimbursable general obligation bonds” means general obligation bonds issued for a public undertaking, improvement or system from which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to the general fund and for which reimbursement is required by law, and, in the case of general obligation bonds issued by the State for a political subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision.

7. The term “revenue bonds” means all bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program and any loan made thereunder and secured as may be provided by law, including a loan program to provide loans to a state property insurance program providing hurricane insurance coverage to the general public.

8. The term “special purpose revenue bonds” means all bonds payable from rental or other payments made to an issuer by a person pursuant to contract and secured as may be provided by law.

9. The term “user tax” means a tax on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by a public undertaking, improvement or system; provided that mortgage recording taxes shall constitute user taxes of a state property insurance program.

The legislature, by a majority vote of the members to which each house is entitled, shall authorize the issuance of all general obligation bonds, bonds issued under special improvement statutes and revenue bonds issued by or on behalf of the State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statutes and revenue bonds and shall prescribe the manner and procedure for such issuance. All such bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision.

Special purpose revenue bonds shall only be authorized or issued to finance facilities of or for, or to loan the proceeds of such bonds to assist:

1. Manufacturing, processing or industrial enterprises;
2. Utilities serving the general public;
3. Health care facilities provided to the general public by not-for-profit corporations;
4. Early childhood education and care facilities provided to the general public by not-for-profit corporations; [or]
5. Low and moderate income government housing programs[;]; or
6. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities,

each of which is hereinafter referred to in this paragraph as a special purpose entity.

The legislature, by a two-thirds vote of the members to which each house is entitled, may enact enabling legislation for the issuance of special purpose revenue

## PROPOSED CONSTITUTIONAL AMENDMENTS

bonds separately for each special purpose entity, and, by a two-thirds vote of the members to which each house is entitled and by separate legislative bill, may authorize the State to issue special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the legislature[-]; and provided further that the State may combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities, separately authorized as aforesaid, in the total amount of not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds. The legislature may enact enabling legislation to authorize political subdivisions to issue special purpose revenue bonds. If so authorized, a political subdivision by a two-thirds vote of the members to which its governing body is entitled and by separate ordinance may authorize the issuance of special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the governing body of the political subdivision. No special purpose revenue bonds shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person or persons under contract or from any security for such contract or contracts or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof. The governor shall provide the legislature in November of each year with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary.”

SECTION 3. Article X, section 1, of the Constitution of the State of Hawaii is amended to read as follows:

### “PUBLIC EDUCATION

**Section 1.** The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or nonsectarian private educational institution, except that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist [not-for-profit corporations]:

1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public[-]; and

2. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities.”

SECTION 4. The question to be printed on the ballot shall be as follows:

“Shall the State be authorized to issue special purpose revenue bonds and use the proceeds from the bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities; and to combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities, separately authorized, in a total amount not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds?”

## PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 5. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 6. This amendment shall take effect upon compliance with Article XVII, section 3, of the Constitution of the State of Hawaii.

### S.B. NO. 996

A Bill for an Act Proposing Amendments to Article I, Section 10, of the Hawaii Constitution.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to propose an amendment to article I, section 10, of the Constitution of the State of Hawaii to permit prosecutors and the attorney general to initiate felony criminal charges by filing a written information signed by the prosecutor or the attorney general setting forth the charge in accordance with procedures and conditions to be provided by the state legislature.

SECTION 2. Article I, section 10, of the Constitution of the State of Hawaii is amended to read as follows:

#### **“INDICTMENT; PRELIMINARY HEARING; INFORMATION; DOUBLE JEOPARDY; SELF-INCRIMINATION**

**Section 10.** No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury or upon a finding of probable cause after a preliminary hearing held as provided by law[;] or upon information in writing signed by a legal prosecuting officer under conditions and in accordance with procedures that the legislature may provide, except in cases arising in the armed forces when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against oneself.”

SECTION 3. The question to be printed on the ballot shall be as follows:  
“Shall Hawaii’s constitutional provision regarding the initiation of criminal charges be amended to permit criminal charges for felonies to be initiated by a legal prosecuting officer through the filing of a signed, written information setting forth the charge in accordance with procedures and conditions to be provided by the state legislature?”

SECTION 4. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.



**COMMITTEE REPORTS**  
**ON BILLS WHICH BECAME ACTS**

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### Notes

1. See also Senate Floor Amendment 4 (SD1).
2. See also Senate Floor Amendment 1 (SD2).
3. See also Senate Floor Amendment 7 (SD2).
4. See also Senate Floor Amendment 10 and House Floor Amendment (CD2).
5. See also House Floor Amendment (HD2).
6. See also Senate Floor Amendment 9 and House Floor Amendment (CD2).

## TABLES SHOWING EFFECT OF ACTS

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2001 Third Special and 2002 Regular Sessions**

Key: Am = Amended  
N = New  
Ren = Renumbered  
R = Repealed

Sp = Special Session  
 \_\_\_\_\_ = Section number  
 to be assigned in  
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